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**R E A L   E S T A T E**  
**PRINCIPLES AND PRACTICES**



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**REAL ESTATE**  
**PRINCIPLES AND PRACTICES**

BY  
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**Endorsement of the National Association of  
Real Estate Boards.**

"Real Estate—Principles and Practices" is the most comprehensive general text-book yet written for the real estate field.

The work is admirable in scope, thorough in treatment, and clear in style. It appeals not only to the student of underlying principles, and to the worker interested in approved practices, but to the citizen conscious of his need for enlightenment on matters basic to the everyday activities of his community.

"Real Estate—Principles and Practices," with its appendices of forms and tables, is a *manual of real estate service*, and its timely merit is recognized with appreciation by The National Association of Real Estate Boards.

A handwritten signature in dark ink, reading "Irving E. Mansfield". The signature is fluid and cursive, with a long horizontal stroke at the end.

Chairman, Publication Council,  
National Association of Real Estate Boards.



## PREFACE

THE real estate business is one which engages the attention of a large number of people. Real estate, that is, land and buildings and all the varied interests in them, is of importance to nearly every one. It is logical then that a course on real estate should be included in the curriculum of a University School of Commerce.

The present work is designed primarily as a college text-book. It is written for the benefit of the student, and aims to make the principles and practices of the business of real estate comprehensible to the lay mind. The book is not a law book but necessarily includes discussions of some of the legal principles governing real estate transactions.

The need for a book on real estate for use by business men has been felt. It is hoped that those actually engaged in the real estate business, or whose interests bring them in contact with real estate affairs, will find that this book fills such a need.

Grateful acknowledgment is made of the debt of the authors to the late Walter Lindner, Esq., whose earlier work on the subject published by the Alexander Hamilton Institute and used as a text-book at New York University School of Commerce, Accounts and Finance, has been a guide in the preparation of this volume.

Philip A. Benson

Nelson L. North, Jr.



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# REAL ESTATE PRINCIPLES AND PRACTICES

## CHAPTER I

### INTRODUCTORY

**Real estate a business.**—Since the time mankind ceased nomadic existence and took up fixed habitations, land and buildings thereon and interests therein have been the subject of commercial transactions. Large areas of the earth's surface are now privately owned, improved in many cases with very valuable buildings and in populous communities the land represents a large part of the wealth of the community. It is bought and sold, improved, managed and variously dealt in constantly. This has given rise to the real estate business which engages the attention of many persons; from the man who buys a home only a few times during his life, to the man whose entire time is devoted to the business either for himself or others.

**Ethics of the business.**—In every real estate transaction the parties must be governed by the highest ideals of fair dealing and honesty. This does not require either party to give away any fair advantage, nor confide to the other his motives or necessities. Neither is he required to relax in the least his good judgment. But failure is certain, soon or late, to overtake him who goes beyond the truth in his representations or having once given his promise or agreement, fails to live up to it. And this is so even if the agreement be not legally enforceable. Taking advantage of catch-words and technical phrases may seem desirable at the time, but the successful real estate man will redeem his promise even when to do so results in loss to him, for he knows that a good reputation is his most valuable asset. Others will deal with him when they know his word can be relied on, for it is not always convenient to put all relations on a legally enforceable basis. Consequently the man whose standard is high finds his business constantly increasing, while the one in whom full reliance cannot be placed, soon finds himself with little if any business.

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**Divisions of the business.**—Taking the view that every transfer of realty or an interest therein is a transaction within the meaning of the Real Estate business, we must divide the business into two general divisions, INACTIVE and ACTIVE. The INACTIVE or INVESTMENT branch of the business is engaged in, usually not as the primary source of livelihood, but rather for income or personal use. The man who has savings from his vocation or accumulated capital from any source, seeking investment for it may turn to real estate and there place his money. His desire is to have his money earn him a profit without devoting his time to the business.

The investment branch of the business may be divided into

1. Purchase for own use.
2. Purchase for income from rents.
3. Purchase to hold for resale at higher price.
4. Mortgage lending.

Purchase for own use occurs in the case of the acquisition of business or factory property by a business firm or a residence by an individual. In neither of the foregoing transactions is there any active engagement in the real estate business, the entry into the business being merely incidental to some other desire or purpose.

Many persons look with favor upon ownership of income producing property, as an investment. They buy a building, collecting the rents either personally or through an agent, pay the carrying charges, looking to the net return to pay them a profit on the money invested. Usually all work is done by an agent, the investor merely receiving a statement at intervals.

An example of (3) is the purchase of unimproved land adjacent to a growing community, the investor expecting to pay the taxes and other charges for several years, looking for no immediate return upon his money invested, but expecting ultimately, that the growth of the community will increase his land value sufficiently, so that he will be enabled to sell at a price which will net him a profit above the original cost of the land, together with the carrying charges during the time he has owned it.

Thousands of people throughout the country invest part or all of their savings in mortgages upon real estate. They loan a certain sum upon the security of realty deriving profit in the receipt at regular intervals of interest on the money loaned.

The ACTIVE branch of the Real Estate business includes all



persons who devote all or most of their time to the business as a means of livelihood. They not only utilize money capital if required but contribute time and labor. This branch is divided into OPERATION and AGENCY.

**Operation** is the use of capital in commercial transactions in real estate. Realty is made the subject matter of trade. The operator buys and sells, constantly using his capital in successive transactions; his success depends on rapid turnovers. Operation may have to do with.

1. Land.
2. Buildings.
3. Mortgage lending.

The operator in land acquires it, either upon speculation for resale at a profit as it stands or for development and resale. In the first instance the operator has no intention of holding the land for any great length of time as in subdivision (3) of the inactive branch of the business but either expects a rise in value very rapidly or believes he can find a purchaser at once for a higher price than he paid, which will result in profit to him. If such rise does not occur, he will sell to release his money for other use. The operator will often develop the land when he purchases it in an unimproved condition. He subdivides it into streets and building lots of marketable size, lays out streets, curbing and sidewalks, installs water, gas and electric light supply, and having done so hopes to sell the lots for a sufficient aggregate amount to net him a profit, after payment of the original cost of the ground, plus the expenses of the improvements.

Operation in buildings may be

1. Speculative erection.
2. Erection for investment.
3. Speculative buying and selling.
4. Alterations.

In speculative erection the operator purchases one or more lots, erects a building or buildings thereon with the expectation of being able to sell the land and buildings for sufficient to pay him a profit over and above the cost of the land and the buildings. In erection for investment the operator proceeds just as in speculative building, except that his final intent is not to sell the buildings but to retain and use them either for his own occupancy or to derive a profit from the rentals. In this phase of operation the operator ceases to act as such, as soon as the

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buildings are completed, and thereafter comes within the inactive or investment branch of the business.

✓ Speculative buying and selling of buildings is similar to speculation in land. The operator either thinks he can buy the building for less than he can get for it on immediate resale or believes the price will very soon rise and he be enabled to sell at a profit.

✓ Many operators have of late years engaged in alteration work. An old building is purchased which, by reason of antiquated equipment, produces little or no profit. The operator then alters and improves the building, modernizing it, so that it will produce much higher rents, and he is then in position to sell it at a profit over the original cost plus the expense of alteration.

Mortgage lending as an operation in real estate must not be confused with subdivision (4) of the Inactive Branch of the business. In the investment class the lender makes the loan and seeks his profit from the interest paid by the borrower from time to time. As an operator the lender makes his profit on a fee which he is paid for making the loan. He has no intention of holding the mortgage, but at once sells it to an investor, thus releasing his capital for use again.

Under this subdivision are

1. Permanent loans.
2. Building loans.
3. Combination building and permanent loans.

A permanent loan is made for a definite period (usually three or more years) at a fixed rate of interest, upon the security of a mortgage upon property, which is to remain in its present general condition—such for example as a mortgage on a building. A building loan is made, as the name implies, to supply all or part of the funds to erect a building. The loan is made under the terms of a building loan agreement which provides usually that the borrower is to erect on the property covered by the mortgage, a certain kind of building, and that the amount of the loan is to be paid him in instalments, as the building progresses, each instalment bearing interest from the time it is paid. When the building is completed the loan is payable to the lender, the theory being that the builder will sell the building as soon as completed, and from the proceeds of the sale repay the loan. In most instances the purchaser from the builder desires the loan to remain on the property. This

has resulted in the combination building and permanent loan which is exactly the same as a building loan, except that the loan, like a permanent loan, is not payable until the expiration of a fixed period. Thus the builder is enabled to obtain funds to finance his building operation, and continue the loan for the benefit of his purchaser. (Appendix forms 54 and 55.)

**Agency.**—That branch of the active real estate business, known as agency, is the dealing in or with real estate for or on behalf of others. More persons by far are engaged in this class of the business than in any other. Since the agent is not dealing with his own money, his compensation is a share, usually a percentage, of the amount involved. Agency has two general subdivisions (a) brokerage and (b) management.

In brokerage the agent, by reason of his acquaintance and knowledge, is engaged in the task of bringing together persons desiring to make transactions in real estate, whether to buy, sell, exchange, lease, loan, or borrow on mortgage. In such transactions the broker's compensation is known as "commission" the amount of which is usually based on the value of the real estate or interest therein and is fixed by custom or agreement.

Management is that phase of the real estate business in which the agent takes charge and control of real estate for the owner. He collects rents, leases space, arranges for and superintends repairs and attends to the general upkeep of the property. To be successful his aim is to secure rentals as high as possible while keeping carrying charges as low as proper care of the property will permit. His compensation is usually a percentage of the amount of rents collected. In most real estate offices the management business is carried on by a trained force of employees, the profit upon such business being sufficient often to pay the carrying charges of the office. This relieves the agent of the details of management, except for general supervision, and frees his time for the more interesting and lucrative work of brokerage.

Any business necessarily implies commercial transactions in a commodity. One engaging in business, whatever it is, must know his commodity or stock in trade, know how to transfer it, and how to so manage it as to acquire profit. In our study of real estate as a business we shall consider it under three general heads:

## 6 *REAL ESTATE PRINCIPLES AND PRACTICES*

1. Subject matter.—Land, interests in it, liens, taxes and assessments.
2. Transfers.—Contract, examination of title, closing of title and the usual instruments used in connection therewith.
3. Management.—Relation of landlord and tenant, brokerage and valuations.

The laws governing real estate transactions, while there are of necessity many, are neither mysterious nor difficult to understand, and any man should be able, with intelligent effort, to familiarize himself with them so as to aid him materially in whatever business he may be engaged, whether he confines himself to the real estate business or not.

**Property.**—In its legal conception property is the right to possess, use and dispose of a thing. Technically therefore property is not the thing itself but the right to, or interest in it. Practically however the thing itself is also termed property.

**Realty and personalty.**—Speaking again from the practical viewpoint property is of three kinds: Realty, personalty and mixed. Realty may be defined as the land and buildings thereon and anything permanently affixed to the land or the building. Personalty on the other hand is anything which does not fit within the definition of realty. For example, a watch, chairs, rugs and cultivated flower plants are personalty, while trees, buildings, furnace and plumbing as well as the land to which they are affixed are usually realty. Mixed property is of little importance, being such as may be alternately or interchangeably realty or personalty, e.g., a key in the door is an integral part of the building, hence realty; that same key found on the street is merely personalty. For practical purposes realty is often, though incorrectly, termed real property and personalty, personal property.

**Real property and personal property.**—Considering these terms in their legal aspect, that is as indicating the interest in the thing rather than the thing itself, we find that there may be both real property and personal property in realty. From a technical, legal viewpoint, real property is any interest in realty which is measured as to duration by a life, or lives or longer. Any other interest in realty is personal property. The actual length of time is no criterion; the life may last only a few months or years, yet one who is entitled to use and enjoy realty during that period is possessed of a real property right therein.

If his right be under a lease for 99 years (longer than the normal life) his interest, not being measured by a life or lives is personal property.

**Real Estate.**—For all commercial purposes the term real estate has two distinct meanings. First it is the article dealt in, and in this sense it includes realty and all interests therein whether they are legally real or personal property. Second it is the name of the business engaged in by those who conduct commercial transactions in real estate.

**Fixtures.**—As stated above, realty includes not only land and buildings but also anything permanently fixed to the land or building. Such are known as fixtures. It is sometimes a very difficult matter to decide whether an article, which of its nature is personalty, has been so affixed to the land or building as to change its nature from personalty to realty. If so affixed as to become a fixture it is governed by the rules applying to realty and becomes for all practical purposes land just as much as if it were soil. The importance of the question is that if a fixture, the article, unless specifically excepted, passes with a sale or conveyance of the land regardless of the intention of the parties to the transaction.

The following criteria usually determine the effect of the annexation.

I. The reasonably presumable intent of the person placing the article as indicating whether the article should become a fixture.

II. Method of annexation.—It is a general rule that if the article be specially adapted for use where placed, and to remove it would leave the building or land incomplete, it is a fixture.

III. Relation of the parties.—The most important of these is that of landlord and tenant. Trade fixtures installed by the tenant even if they come squarely within I. and II. above, do not become part of the realty, e. g., shelving, counters, show-cases.

## CHAPTER II

### INTERESTS IN REALTY

**Limitations upon ownership.**—Two principal systems of land ownership in England, were Feudal and Alodial. Historically they are very interesting and well worth fuller examination than the scope of this book permits. The Feudal system conceived the absolute ownership of all land to be in the king or sovereign, the subject having merely a feud or right to use the land in return for services. The Alodial system on the other hand recognized the principle that land might be owned by an individual, subject to no proprietary control of the sovereign. It did however recognize certain political rather than proprietary duties, such as to repair bridges, roads and fortresses. In the United States land is owned on principles derived from the Alodial system. We recognize private ownership, yet just as there were certain duties on land under the Alodial system, so there are *limitations upon ownership* and use inseparable from it, which for the mutual welfare of the community are enforced against the individual owner. They are

1. Police power of the State.
2. Escheat to the State.
3. Eminent domain.
4. Taxation.

**Police power.**—The police power permits the municipality to restrict the use of realty so as to protect the health or morals of its citizens. Buildings must be of certain type depending on use, must have certain safety devices, plumbing, and other arrangements. The regulations of the much maligned but very valuable Tenement House Department, the Building, Fire and Health Departments of the City of New York are exercises of the police power, as a limitation upon the use of land.

**Escheat.**—The original owner of all land was the State, from whom all titles are traced under a grant and subsequent conveyance. It would be impossible to conceive of land becoming unowned i.e., owned by no one, hence the law of escheat under which if an owner of land die leaving no heirs and not disposing of the land by will, the ownership of the land goes back or escheats to the State. This however is very rare. Sometimes it is difficult to find the heirs, but there



usually are heirs to be found, if there be sufficient diligence in seeking them.

**Eminent domain.**—The right of eminent domain is the power inherent in the State, to take by due process of law from an owner, his land when necessity arises. Only two requirements must be met; the use must be public, and just compensation paid to the owner. Whether or not he wants to surrender his land makes no difference, nor can he set his own price. His desires are not consulted and a fair valuation fixed by expert appraisers is paid him. Land is obtained for streets, parks and public buildings by means of the exercise of this power.

**Right of taxation.**—Under the right of taxation, the fourth limitation, the State levies taxes for its support, and the maintenance of all its varied branches which protect and benefit the citizens of the State. It is fair that they should pay for the protection and benefit they receive. Land by reason of its permanence and accessibility is a convenient article to tax, and is usually the basis for taxation and such taxes when levied, if not paid in due course, are enforced and may result in the owner losing his land.

**Estates and chattel interests.**—Rights in realty which in the legal sense amount to real property (extending in duration one or more lives or in perpetuity) are termed "estates," while those which are personal property are known as chattel interests. There may be both estates and chattel interests in the same piece of realty and several of each. The principal chattel interests are leaseholds (Chap. XI) and liens (Chap. III). The most common estates are, fee simple, fees determinable and conditional, life estates and remainders, dower, curtesy, tenancy in common, joint tenancy and tenancy by the entirety.

**Fee simple.**—Fee, fee simple, and fee simple absolute, all having the same meaning, may be defined as the largest possible estate in real property. The owner of this estate may use it and dispose of it during his lifetime or by his will as he desires, or if he do not make any such disposition, the real property automatically passes at his death to his heirs without any future limitation, other than the four limitations mentioned above, which it must be remembered affect all real property. The instrument creating the estate contains usually the words "to A and his heirs and assigns forever." Most realty is held in fee simple, and the term "Ownership" ordinarily indicates

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such a right. A fee simple is therefore the subject of the usual commercial transaction in the sale of realty. All other estates in real property are less than and some part of the fee simple. When gathered together they make a complete fee. This "splitting up" of the fee simple is usually as to quantity or time.

**Fee upon condition and fee determinable.**—In both these estates the holder has a fee simple except that there is a limitation which may take his rights from him and give them to another. Both give the holder all the benefits of full fee ownership subject to the happening of a future contingency, which if it occurs ends his rights. In a fee upon condition the contingency may never arise, while in a fee determinable, it must arise, if at all, within a certain or determinable time. For example: A piece of land is given to be used as a church, the gift providing that if used for any other purpose the land shall revert to the giver or his heirs. In this case the fee of the land is in the church organization and may remain in it forever but will cease when the land ceases to be used for a church, in which event the fee would revert to A if living, or his heirs. The fee is upon condition. If land is given to A and his heirs with a provision that if A die leaving no children then the land shall go to B, A has a fee determinable. A has the full benefit as long as he lives. Within a certain time, that is, at A's death, the contingency must occur if at all. Either A leaves children or not. In either event the limitation on the fee is then determinable.

**Life estates and remainders.**—These are very common and a simple example of "fee splitting." A man gives land to A for his life and at A's death it is to go to B. A, who is known as the life tenant, takes a life estate, that is the full right in the property for life, and B takes a remainder—the right to receive and use the property at A's death. When A dies the fee is reunited in B who is then the owner of a fee simple in the land. The life interest may be measured by the life tenant's own life or by that of any other person. The remainder may be so created that the remainderman cannot be known until the termination of the life estate. If it can be determined the remainder is vested, if not, contingent. For example: Gift to A for life remainder to B. B has a remainder and since his right to succeed is fixed, his possession merely being suspended till A's death, he has a vested remainder. But suppose the gift were to A and his children after death, but

provided that if he left no children then B should take. In this case B has a remainder, however, whether or not he will ever be entitled to possession, and enjoyment of the land cannot be ascertained till the time of A's death; and he will take no rights if A leaves children. Consequently B's remainder is contingent.

**Dower.**—Dower is the estate for life which is given by law to a wife upon her husband's death, in all real property owned by him at any time during marriage. The requisites for the establishment of the estate are:

1. A valid marriage.
2. Ownership in husband.
3. Death of husband.

The interest of the wife attaches to the real property even during her husband's lifetime and cannot be cut off without her consent. This consent, when given, is usually by a deed from the wife, or by her joining in the deed with her husband, when he sells the real property. It must not be forgotten, however, that the husband having once owned real property during the marriage, no act of his can dispose of his wife's right of dower. His deed or will attempting to do so is entirely ineffectual. All that he could give would be his own interest in the property, his wife's dower right still attaching. She cannot release her dower right to her husband except by agreement before marriage. If she desires to relinquish her claim she can do so only to the person who has purchased the property. Should the wife predecease her husband, of course her interest ceases. Upon her husband's death, the dower estate of the surviving wife becomes fixed, and in New York and most other States entitles the wife to one-third of the income from the real property as long as she lives. Usually the wife's dower right is satisfied by paying her a lump sum, arrived at by multiplying one-third of the net rent for one year by the number of years the insurance tables indicate the wife will live, after her husband's death.

**Curtesy.**—Tenancy by the curtesy is the life estate which is given by law to the husband in real property owned by his wife. It is established by

1. A valid marriage and birth of a child.
2. Ownership in the wife at her death.
3. Death of the wife.
4. No disposition by wife's will.

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It will be seen at once that this estate is very different from dower. Curtesy may be defeated by the wife, by deed at any time during her life, or if she disposes of the real property by will. Consequently the husband's interest, unlike dower, is of no practical effect until the death of the wife and even then her will may cut off his right. If all the conditions exist however, then the husband becomes entitled to the total income from the property as long as he live.

**Joint interests in land.**—Land may be owned by two or more persons, it need not be entirely in the ownership of one person. These joint interests are often found and the most usual are the following:

**Tenancy in common.**—This is the ownership of land by two or more persons, each of whom has an undivided interest which upon the death of one passes to the heirs or under the will of the one dying. Unless the instrument creating the joint interest specifies to the contrary, this interest is the one established. Any person owning such an interest may convey his joint interest.

**Joint tenancy.**—A joint tenancy is similar to the tenancy in common except that upon the death of one his interest passes to the other—as the law terms it—by survivorship. To create this interest the instrument must specifically so state; as by the words "A to B as joint tenants" or "to A and B and their survivor." Either may convey his interest and in that event a tenancy in common arises.

**Estate by the entirety.**—A deed of real property to a husband and wife as such gives them a joint interest known as an estate by the entirety. They each, under the law, own the entire property. Neither one can sell his or her interest and the survivor upon the death of either, becomes entitled to all the property.

**Title to real property.**—While not strictly in accord with legal theory, for practical considerations, title to real property passes usually in one of four ways.

1. By descent.
2. By will.
3. By voluntary alienation.
4. By involuntary alienation.

**Title by descent.**—The right of a person's heirs to succeed to his title upon his death if he has failed to dispose of his real property by will is known as title by descent. Heirs are spe-

cifically designated by law as to their order of succession. In general children are first entitled to succeed and in their absence parents and brothers and sisters.

**Title by will.**—Usually a person owning real property endeavors to dispose of it by provision in his will. Such disposition is known as a “devise” and the taker is termed the “devisee.” Subject to certain legal restrictions a devise may be made to anyone.

**Title by voluntary alienation.**—This is the term applied to all sales and gifts made during his lifetime by the owner of real property. Its necessary element is that the seller act of his own free will without legal compulsion. It includes the usual commercial transactions by which ownership of land is transferred.

**Title by involuntary alienation.**—All transfers of title brought about without the owner’s consent may be placed in this class, such as: legal sales following foreclosure or enforcement of a lien, adverse possession, escheat to the State.

## CHAPTER III

### LIENS

**Liens.**—In addition to the estates and chattel interests already mentioned, there are various rights, known as liens, which affect the possession and ownership of realty. A lien is the right given by law to a creditor to have a debt or charge satisfied out of the property belonging to his debtor. Liens are of importance as the holder (lienor) may be entitled to have the realty sold whether or not the owner desires it. A lien necessarily arises from the relation of debtor and creditor and although the creation of that relation may have been voluntary, the lien once coming into existence, its enforcement is wholly free from any question of the owner's volition. Liens are of two kinds: general and specific. A general lien affects all the property of the debtor, a specific lien only a certain piece or pieces. The most important specific liens are:

1. Mortgages.
2. Taxes and Assessments.
3. Mechanic's Liens.

The common general liens are:

1. Judgments.
2. Decedent's Debts.
3. Transfer Tax.
4. Corporation Franchise Tax.

**Lien of mortgage.**—A borrower of money, or one owing a debt may, for the purpose of securing payment of the amount due the lender or creditor, execute an instrument known as a mortgage. This instrument purports to transfer to the creditor the title to specific real property. As the transfer, from the point of view of the law in New York and many other States, is merely conditional, becoming null and void upon payment of the debt, the mortgage does no more than create a specific lien on the property. Because of the importance of mortgages in the real estate business a separate chapter has been devoted to them.

**Taxes and assessments.**—Taxes and assessments levied according to law become a specific lien on the real property af-

fectured thereby. If the charges are not paid the taxing body may take such action to enforce them as will result in the sale of the property. A fuller description of liens of this character will be found in another chapter.

**Mechanic's liens.**—A mechanic's lien is a lien given by statute to those who perform labor or furnish material in the improvement of real property. The law recognizes the right of the material man and laborer to hold for the amount of their claim the property to which they have added value and this right is in addition to the right of action against the person who made the contract of employment or purchase. The lien is specific as it affects only the property benefited, and it is governed by the provisions of the statute under which the right is obtained. A mechanic's lien is usually asserted by filing a notice of the claim with the county clerk. (Appendix form 1.) This notice must be under oath of the lienor or his agent and must set forth the claim in detail as to date, amount, location of property, etc., and must be filed within a certain time after the last material was furnished or the last labor performed. It then continues usually for a period of one year when it expires unless renewed for a further period by court order. The filing of the lien gives notice of it to all dealing with the property, and it is good against all except those whose rights are prior as shown by the public records. The lien is not affected by unrecorded instruments and would take precedence over a deed or mortgage given prior to, but not recorded until after the filing of the lien.

The right to file a mechanic's lien is given not only to the contractor dealing directly with the owner of the property, but is also given to sub-contractors. In Massachusetts, Pennsylvania, and some other States, the owner's property can be held for materials and labor supplied by a sub-contractor in accordance with the provisions of the original contract. This imposes upon the owner the obligation of seeing that the sub-contractors are being paid by the general contractor in order to avoid liens upon his property and additional costs for the work performed. In most States, including New York, the law is that the sub-contractor is entitled to a lien on the property by virtue of his subrogation to the rights of the contractor-in-chief. Sub-contractors under this rule can hold the owner's property only for the amount due under the main contract—the one to which the owner is a party. If, however,

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the main contract calls for installment payments—that is, paymer ts at certain periods or at certain stages of the work—and the owner anticipates these payments, he may be held by sub-contractors for the amount so anticipated. They can rely on his making payments only according to schedule and he deviates therefrom at his peril. Owners may also be held for payment of work done on their property with their consent and approval, either expressed or implied, even though the contract for the work was made by some other person, such as a tenant. The owner is not liable, however, for work done by a tenant without his knowledge or consent, nor is a remainderman usually liable for work done by a life tenant, and in such cases liens cannot be enforced against the owner's or remainderman's property.

**Enforcement of mechanic's lien.**—A mechanic's lien is enforced by foreclosure. The foreclosure is a legal action against the owner and those whose claims against the property are inferior to the lienor's. A judgment of the court in favor of the lienor orders the sale of the property by an officer of the court, the payment into court of the moneys realized at such sale, a marshalling of those claims against the property which have been affected by the foreclosure, and a payment of the claims in their proper order. The law provides that if there are at the time of the action a number of mechanics' liens against the property, all must be brought into the action so that one action at law disposes of them all.

The right to file a lien is an important one to mechanics and material men. They can ascertain the ownership of the property from the public records, and also find the amount of mortgages or other liens against it. This information assists them in determining whether or not to extend credit to the owner of the property. With due care losses through bad debts can be reduced to a minimum. Other States than New York have laws which give greater effect to mechanic's liens. Objection may be made to some of them on the ground that they tend to discourage building operations especially those of a speculative kind. New buildings are often financed by means of building loan mortgages. It is reasonable to assume that mortgagees will not be attracted to the building loan market should they find that the law protects the mechanic's lienor to the mortgagee's detriment.

The filing of mechanic's liens against a building in course



of construction is usually an indication of the inability of the owner to meet his obligations. The important thing for all persons interested in the operation is to get the building finished. It is then capable of producing an income and is more readily saleable. Building loan mortgages are advanced from time to time during construction and in some States (New York, for example) advances made by a mortgagee before mechanic's liens are filed are prior in lien to the claims of those who performed the work and furnished material. Cessation of work on the building often results in a foreclosure of the building loan mortgage and a consequent loss to the contractors. To remedy this situation the New York law provides that with the approval of the mechanic's lienors holding seventy-five per cent of the amount due, a trust mortgage may be made for the benefit of creditors and additional money borrowed on a mortgage for the purpose of bringing the building to completion. All the liens take equal rank and become subordinate to such a mortgage. The assumption is that on completion the building will be worth enough to repay (1) the money borrowed before the liens were filed, (2) the additional amount borrowed to complete the building, and (3) the amount of the trust mortgage given to secure the amounts due the lienors. Anything the building may bring on a sale in excess of the first and second items will go to pay item number three and will be so much the creditors will get that they would not have received had the original mortgage been foreclosed on an uncompleted building.

The law further provides that lienors of a piece of property to the extent of seventy-five per cent of the aggregate amount of the liens may consent to a sale of the property upon condition that a specified sum be deposited with the county clerk. The property is then freed from the liens and the lienors have recourse to the sum of money so deposited. This is a practical provision of the law designed to permit the sale of the property by negotiation and agreement (even though it bring less than the total liens) rather than at a forced sale resulting from a foreclosure.

**Discharge of mechanic's lien.**—A mechanic's lien may be discharged or become non-effective as follows:

(a) By expiration. This occurs one year after filing, unless an action to foreclose it or an action to foreclose a mortgage on the property has been begun within that period.

(b) By payment, and by a certificate or satisfaction piece executed and acknowledged by the lienor, and duly filed in the county clerk's office.

(c) By order of the court vacating or cancelling the lien for neglect to prosecute it. This may be obtained by service of notice by the owner on the lienor requiring the lienor to commence an action to foreclose the lien within a specified time, not less than thirty days. The claim of the lienor may be disputed by the owner and he may take this course in order that the claim may be tried in court, or the lien cancelled. If the court order is obtained the record of the lien will be marked "Discharged by Order of the Court."

(d) By filing of a bond approved by the court. The bond may be that of two or more personal sureties or of a surety company. The record of the lien is marked "Discharged by Bond," the property is freed from the lien and the lienor has recourse to the bond.

(e) By deposit of money into court. Before an action is commenced on a lien the amount claimed with interest to date of deposit may be deposited with the county clerk. After an action has been commenced the amount deposited shall be such a sum as in the judgment of the court will cover the amount of any judgment that may be recovered in the action. The lien is marked "Discharged by payment."

**Judgments.**—A judgment is the determination of the rights of parties through an action at law. All judgments are not money judgments, and only those which give a money award are here considered. Judgments for the payment of money, when docketed, become a general lien on all property of the debtor. The judgment docket is the book or register kept by the county clerk in which is entered a record of all judgments of which the clerk has been furnished a transcript. The docket is arranged alphabetically according to debtors. When a search is made for liens against a piece of property it is important to examine the judgment docket to see if there are any judgments against those who now own, or have for a certain time prior owned, the property.

A judgment is enforced by execution and by the sale of any property of the debtor that may be found. Execution is a writ directed to the sheriff, the executive officer of the court. This writ authorizes him to seize the debtor's property and to sell so much of it as may be required to pay the judgment

plus incidental expenses. The property may be real or personal. If there is real property apparently owned by the debtor, the sheriff, after legal advertising, offers to the highest bidder all of the debtor's right, title and interest of, in and to the property. This interest may be substantial or it may be nominal or even nothing at all. The buyer at such a sale ascertains this at his own risk before making a bid. What is of interest to us in this discussion is the fact that the judgment is a lien on the debtor's real property and such property may be sold against his will by an officer of the court.

**Discharge of judgment.**—A judgment is a lien on property from the time of being docketed until a specific time, usually about ten years, after its date when the lien expires. Under certain circumstances the lien may be renewed, but we seldom find this done. If the debtor pays a judgment he is entitled to a formal receipt called a satisfaction piece. This satisfaction piece is filed with the county clerk who, upon its receipt, marks "satisfied" against the record of the judgment on the docket. Many judgments, after being obtained in a lower court, are reversed on appeal to a higher court. Pending the appeal the debtor may file a bond, approved by the court, in order to free his property from the lien of the judgment. The judgment in such a case is marked "Suspended on Appeal."

**Attachments.**—Another form of lien on real property is the attachment which is a statutory privilege given to a plaintiff or complainant in the courts in an action for money damages before any judgment is procured. In some States every plaintiff in every action may file an attachment against the defendant's property. Most States, however, give the plaintiff this privilege only for specific causes; generally for the non-residence of the defendant or his removal, or threatened removal, of property from the State or for his obtaining credit on the basis of a false financial statement made in writing. By filing an attachment the plaintiff in the action practically insures himself that there will be some property out of which the judgment could be paid if the action is successful.

In order to protect the defendant, the plaintiff obtaining the writ of attachment must file a bond in writing that if the defendant wins, the plaintiff will pay all costs and damages which the defendant may suffer because of the attachment.

An attachment is filed in practically the same way as a judgment lien, and has substantially the same right of priority as the judgment. It lasts until the action has been disposed of. If the plaintiff wins the lien of attachment is discharged. If the defendant against whom the attachment lien has been filed wishes to sell his property during the pendency of the action he may file a bond equal in amount to the plaintiff's demand, plus costs. The county clerk would then mark the attachment lien "Discharged by Bond."

**Lien of decedent's debts.**—The real property of a decedent passes at his death to his devisees if he leaves a will, and to his heirs at law if he die intestate. Title to the property vests in the devisees or heirs subject to such liens as existed at the time of decedent's death. The property is also subject to the lien of all just debts against the estate. The debts are paid, however, out of the personal property in the estate using first that not specifically bequeathed, then that disposed of by legacies. If all the personal property has been used up and unpaid debts remain, the decedent's real property may be sold to pay them. It is important, in taking title to property from an estate, or recently owned by a deceased person, and in making loans on such property, to obtain satisfactory proof of the payment of all debts of the decedent.

**Transfer tax.**—The collateral inheritance tax, or transfer tax, as it is often called, is a tax levied by the State upon the right to inherit from, or take under the will of a deceased person. It is not a tax upon the estate but on the recipients. However, the amount of the tax is, by law, made a lien upon the property of the estate, and until paid the realty is subject to it as an encumbrance, and clear title cannot be given. If the tax is not paid in due time, after the death of the deceased, the State may enforce its lien, which is a general lien, by selling sufficient of any of the assets of the estate to pay the tax. The amount of tax is found as follows: The value of the interest passing to each beneficiary is appraised. The tax is computed by taking a certain percentage of the appraised value. The rate per cent varies; immediate kin being taxed at a lower rate than distant relatives, and distant relatives than non-relatives. Relatives are also allowed certain exemptions which are deducted from the value of their interests before computation of the tax.

**Federal estate tax.**—This tax differs essentially from the

transfer tax in that it is levied not upon the amounts passing to the beneficiaries, but upon the total estate. Under the law as it exists at the time of writing an exemption of \$50,000 is allowed and no report need be filed unless the gross estate is at least \$50,000. The tax is computed on a percentage, which increases with the size of the estate, i.e., 1% on first \$50,000—2% on next \$100,000—3% on next \$100,000 etc. The amount of this tax is a lien upon the entire estate, and payment may be enforced by sale of any portion.

**Corporation franchise tax.**—In most States corporations are taxed annually on their franchise, or right to do business in the State. There are various methods of computing the amount of the tax. It is usually based on the amount of either capital or capital stock or net income of the corporation. The tax is a general lien on the property of the corporation and can be enforced against it.

**Conditional bill of sale.**—There are certain encumbrances against real property which are not true liens. One of these is the conditional bill of sale. This is an agreement for the sale of articles of personal property which are to be used in the improvement of real property under the terms of which title to the articles sold does not pass until the purchase price has been paid. The law in New York requires that the agreement must be filed in the office of the county recording officer at or before the delivery of the goods to the premises. If so filed, it is valid against the claims of other parties having interest in the realty, even though the articles may be affixed to the realty. Articles which are frequently the subject of these agreements are gas and coal ranges, boilers, elevators, lighting fixtures, etc. The agreement remains as effective notice usually for one year only unless refiled.

**Other encumbrances, not true liens.**—Other encumbrances against real property, which, although not liens must be considered, include easements, covenants and restrictions, governmental regulations and proceedings for their enforcement.

Easements are rights of others to have certain uses of one's property. Examples of such are rights to maintain a party wall, right of way for ingress and egress over another's land, right to maintain windows for light and air, and right of drainage across another's property.

Covenants and restrictions arise through agreements contained in deeds or are created by specific agreements between

interested parties. Their effect is to limit the use of the property and to provide that certain things may or may not be done with it. Restrictions may specify the character and location of the building to be erected on the land and the uses to which any such building may be put. They are imposed or created to protect the property or neighboring property.

Governmental regulations include such things as the zoning resolutions adopted by a municipality. Under such a resolution, the city is zoned and the use, height, and area of buildings thereafter erected is regulated. The building department, tenement house department, and other governmental authorities regulate the use and occupancy of buildings. While orders issued by these departments are not liens, they should be considered in dealing with real property. Disobedience to the orders may result in an action at law against the property, including a notice of pendency of action filed in the county clerk's office and the possibility of a penalty being imposed.

**Priority of liens.**—The usual rule as to priority of liens is that they rank in the order of their filing or recording in the office of the proper officials. A mortgage recorded yesterday has precedence over one recorded today, and both are prior in lien to a mechanic's lien that may be filed tomorrow. As to judgments, there is an exception to this rule; a judgment is not good against the rights of those claiming under a deed or mortgage actually delivered prior to the date of docket of the judgment, even though the deed or mortgage has not been recorded. The reason for this is that the recording laws protect innocent purchasers and mortgages for value and such it may be presumed are those who hold the deeds and mortgages. They parted with value when the deed or mortgage was delivered to them and they relied upon the record title in doing so. The creditor who secures a judgment does so regardless of what a debtor may or may not own—he asserts an existing claim in an action at law and when he secures his judgment it becomes a lien on what the debtor actually owns at that time. It must of course be recognized that deeds and mortgages given to defraud creditors may be set aside, and that reference is here made only to those given in good faith for value. It must also be noted that the lien of all taxes and assessments imposed by any governmental authority is superior to every other lien regardless of the date of the lien or its recording. Of course, the relative rank

of any two or more liens can be changed by agreement between the holders of them and this is often done with respect to mortgages by means of an instrument known as a subordination agreement.

(Appendix form 49.)

## CHAPTER IV

### TAXES, ASSESSMENTS AND WATER RATES

**Lien of taxes.**—The ownership of property in a civilized community is subject to the right of the State to levy taxes upon it for the purpose of obtaining funds to defray the expense of government. As the expense is recurring the tax levy is made at regular periods. It is apportioned on the basis of the valuations of the property taxed and it is made a lien on it which may be enforced by the sale of the property or some interest in it.

Taxes may be levied upon both real and personal property. There are of course other forms of taxation, such as the Income Tax, which are not direct levies upon property of any kind.

**Various tax levies.**—In large cities there is usually one annual tax levy which provides funds for all purposes for which the city raises money. In other localities there are various tax levies and these may be all or some of the following:

(a) *State tax.*—The expenses of the State government are met to a large extent by special taxes such as income taxes, inheritance taxes, corporation taxes, stock transfer tax, and automobile tax. If these taxes do not provide the State with sufficient funds, a direct tax is levied by counties based upon the value of the taxable property in each county.

(b) *County tax.*—Each county of the State raises money by taxation for the expenses of the county government, and its courts, penal institutions, hospitals, care of the poor, roads, and bridges.

(c) *Town tax.*—Local town government provides for its needs by taxation. Frequently State, county and town taxes are levied and collected at the same time.

(d) *School tax.*—The school tax is often a separate levy by school districts for the purpose of maintaining the public schools. The appropriation for which the tax is levied is usually voted by the tax-paying residents of the district.

(e) *Highway tax.*—The highway tax is usually made by highway commissioners for the upkeep and repair of the roads within the district.



(f) *City or village tax.*—Incorporated cities and villages within a county provide for their recurring expenses by a separate and independent tax levy.

**Determination of amount of tax.**—In order to ascertain the amount of tax against a particular piece of property a tax rate must be determined. To arrive at the tax rate, two factors are used—the budget or amount of money to be raised, and the total valuation of taxable property within the district. The total amount to be raised by taxation divided by the total assessed valuation gives the rate. The rate applied to the value of a particular parcel of real estate gives the amount of taxes chargeable to it. For example, assume the budget to be \$200,000,000, the assessed value of the property \$8,000,000,000, and the amount derived from revenues other than taxes for real estate \$50,000,000; the tax rate would be determined by deducting \$50,000,000 from \$200,000,000, which would leave \$150,000,000, which divided by \$8,000,000,000 gives .01875, or \$1.875 per \$100 assessed valuation.

**The Budget.**—A budget is “a statement of probable revenue and expenditure and of financial proposals for the ensuing year as presented to or passed upon by a legislative body.” It is customary, in the preparation of a budget for each branch or department of the Government to prepare in detail an estimate of the amount it requires for the period under consideration. This estimate, with those of other departments, are analyzed and amended, usually decreased, by the legislative body. After consideration of all estimates, the final figures are assembled and the total of them represents the amount of money the political body appropriates for its use for the period. There usually are revenues derived from sources other than taxation and these, estimated as closely as possible, are deducted from total of the budget. The remaining amount represents the sum which must be raised by taxation on property within the jurisdiction. In some States there is a tax on personal property. In others, since the enactment of income tax laws so much personal property is exempt that the direct tax falls almost entirely upon real property.

**Assessed valuations.**—Since the tax is apportioned to various properties in proportion to the value of each, it is necessary for the taxing body acting by its representatives to

examine and equitably appraise all taxable property. Various methods of appraisement are used, some of which take the property at a fraction of real market value, such as one-half, two-thirds, or three-fourths. Others figure the value to be the amount for which the property would sell at a forced sale, and again others use as a basis the full market value of the property. Many large cities use the last method and this is generally coming to be recognized as the only one which is fair and equitable. Full market value has been defined as the price which one who wishes to buy, but is not compelled to buy, would pay to a seller willing but not compelled to sell. Prices paid at auction sales, particularly forced sales, do not usually measure true market value, and neither do prices paid for property by those who have a need for that particular property only.

The assessor, in valuing property, frequently separates the values of land and buildings. The land is valued on the basis of the value of a standard or typical lot. That is, a lot of the unit of size usually marketed in the vicinity. If the assessor fairly determines the value of such a lot, he allocates to all similar lots the same value. It will of course be seen that in the valuation of lots in cities and villages each street and, in fact, each block must be considered separately. Main thoroughfares and business streets create values in excess of those on side streets and in residential districts. Corners, corner influences, plottage and similar circumstances are taken into account in order that the assessor may make an equitable appraisement, one that is fair and just both to the tax payer and the community. In certain cities maps are published by the tax departments giving the front foot value of land in each block of the entire city.

The standard lot is usually considered to be one hundred feet in depth. Lots of varying depths are appraised by rules which have been devised for the purpose. New York City assessors use the Hoffman-Neil rule which calculates the proportion of value of each foot in depth from one foot to one hundred feet.

While all lots in a block may have the same value, the buildings may be different both as to size and character. In the valuation of buildings the tax assessor must consider whether they are new or old and whether they are or are not the proper improvement for the land. New buildings are

usually worth their cost of production and the assessment is computed on that basis. As the age of a building increases, allowance is made for depreciation. When the land value remains stationary and the building depreciates through age the total valuation of land and building will therefore tend to decrease year by year. In many localities, land increases in value as time goes on, due to its availability for a better building; that is to say, one producing a greater rental. The assessed valuation of the lot improved with an old building will increase but the total of land and building will remain the same. In such cases the building is assessed, not at its cost less depreciation, but at *the amount it adds to the value of the land*. This condition may progress so that a once valuable building adds to the land merely a nominal amount.

Assessors should always consider the rent a building is capable of producing. It has been stated as a principal that an improved parcel of real estate is never worth more than its capitalized rental value unless the land alone exceeds in value this capitalized sum.

The cost of a building of a certain type can be determined to a fair degree of accuracy by means of certain factors derived from experience in actual building costs. These may be the cost per foot of the cubical contents of the building or the cost per square foot of floor surface. The type of building is first considered,—loft, factory, non-fireproof walk-up apartment, elevator apartment, office building, etc. Then its size is ascertained. The proper unit is applied and the result is the estimated cost of the building. The units of cost are subject to revision and change from time to time to meet varying conditions.

**Reduction of assessed valuation.**—The value assigned to a piece of property by a tax official is merely the opinion of that official as to its value. The owner of the property may not agree with such opinion and may feel that his property has been assessed too high. It is his privilege to object to the assessment and he is entitled to a hearing on his objections. In making a protest of this kind it is advisable to analyze the assessment as to land and building and see which is erroneous. If it is claimed that the land is assessed too high, it must be for one of two reasons. Either a mistake has been made (in which case a correction is easily obtained), or the wrong unit of value has been applied. A change in the latter requires

more care as it means that a reduction in the unit of value will affect the assessment on neighboring property also. It is usually the case that a reduction in the assessed valuation of one lot results in reducing the value of adjoining lots also, and often all the lots in an entire block. Evidence of value may be offered by a tax payer by way of information as to sales, mortgages, etc., and his contention may be supported by such evidence.

If the tax payer's protest is based upon a claim of over-assessment of the building, he has a fair chance to obtain a reduction. Every building is considered separately so that a reduction of assessed value of one does not necessarily mean that others must be reduced also. In making a claim of this kind the owner may offer as evidence proof of the cost of the building, its rental, physical condition, sales price, mortgages, etc., etc.

**Certiorari.**—The action of the tax officials is subject to review by the court. If an owner feels aggrieved by an assessment upon his property and is unable to secure a reduction upon protest to the officials, he can appeal to the courts. This is a proceeding *a certiorari*, that is to say, it is upon a proceeding whereby the tax officials are required to produce their records and to certify to them to the court in order that the court may determine whether they have proceeded according to the principals of law by which they are bound. The court does not fix the assessment but it may criticise the administrative officers and give directions as to how they must proceed. It is, of course, also possible that the court will sustain the tax officials and find that they have proceeded according to law in fixing the assessment.

**Taxes in New York City.**—The practise followed in the levying of taxes is illustrated by the methods employed in New York City. There you will find a Board of Tax Commissioners consisting of a President and six Commissioners. Each borough of the City is divided into sections and a Deputy Tax Commissioner is assigned to each section. These Deputies commence to examine and appraise the property in their respective districts on April first of each year. Their reports are completed and tabulated by October first, and on that date the records are open for public inspection. From October first to November fifteenth owners may file notices of protest of any assessment. On November sixteenth the books

are closed and the commissioners hear and consider protests made by owners. On February first the assessment rolls are made up and on March first they are delivered to the Board of Aldermen. On March third the Aldermen fix the tax rate (by dividing the total amount to be raised by the total of all assessed valuations), and on March twenty-eighth the rolls are delivered to the Receiver of Taxes. The Receiver of Taxes computes the amount of tax for each parcel of real estate by applying the rate against the assessed valuation of the parcel. One-half of the tax becomes due and payable and a lien on the property on May first, and the balance on November first. The first half is payable during the month of May and the second half in November, and if not so paid interest at seven per centum per annum from the due date is added.

The budget for the City is made up from estimates submitted to the Board of Estimate and Apportionment by the various City departments. Hearings are held and investigations conducted, after which a tentative budget is prepared and approved. It is then referred to the Board of Aldermen. This Board may reduce or strike out appropriations made but cannot make additions to the budget. The Mayor also passes on it and may veto the reductions and eliminations made by the Aldermen. The budget finally adopted for the ensuing year must be certified by December twenty-fifth and must be published in the City Record before December thirty-first.

There is a slight difference in the tax rates for the five boroughs due to the fact that each pays the expense of its own county government.

The entire assessment roll of the City is published as supplements to the City Record. The City also publishes outline maps showing each block and the boundaries of the sections, and a land value map book showing units of land value on each block.

Taxes are assessed against the property by section, block and lot. By such method all outstanding liens for taxes (and also assessments for local improvements and water rates) can be readily ascertained. The system has many advantages over that of levying the assessment against the property by names of owners. Under the latter system search

## APPROPRIATION AND TAX SUMMARY

Comparison of 1920 and 1921 Budgets Grouped by Function or Purpose

<i>Grouping of Appropriations According to General Function or Purpose</i>	<i>Budget of 1920 — Group Totals</i>	<i>Per Cent. of Each Group Total</i>	<i>Per Capita Cost 1920</i>	<i>Budget of 1921 — Group Totals</i>	<i>Per Cent. of Each Group Total</i>	<i>Per Capita Cost 1921</i>
Administrative, i. e., General Administration.....	\$3,941,655 60	1.449	\$ 07	\$4,678,905 90	1.361	\$0 81
Legislative (Aldermen and City Clerk).....	302,840 00	.113	05	408,542 30	.119	07
Judicial and Semi-Judicial.....	11,778,813 74	4.332	2 08	13,689,333 05	3.993	2 39
Educational.....	52,754,968 57	19.394	9 31	54,680,852 69	15.901	9 50
Recreation, Science and Art, viz.:						
(a) Parks, Parkways and Drives.....	3,038,340 46	1.117	54	3,951,600 75	1.149	69
(b) Zoological and Botanical Gardens, Museums, etc.....	1,541,189 57	.567	27	1,777,823 98	.517	31
Health and Sanitation (includes Water Supply).....	28,996,533 97	10.660	5 12	35,534,746 76	10.332	6 18
Protection of Life and Property.....	42,745,476 81	15.714	7 55	51,807,565 03	15.065	9 01
Correctional Purposes.....	2,432,506 20	.894	43	2,571,992 25	.748	45
Charitable Purposes (incl. Dept., Instns. and Child Welfare).....	17,654,145 93	6.490	3 12	19,299,787 17	5.612	3 35
Streets, Highways and Bridges (Care and Maintenance).....	7,761,066 70	2.853	1 36	9,553,943 58	2.778	1 66
Public Enterprises (Docks and Ferries).....	3,407,324 59	1.252	60	4,421,577 31	1.286	77
Public Buildings and Offices (Care and Maintenance).....	2,362,163 82	.868	41	3,687,578 51	1.072	64
Board of Elections and County Canvassers.....	2,136,315 00	.784	38	2,057,491 00	.598	36
Publication, Advertising and Printing.....	1,278,330 00	.470	22	1,615,941 00	.470	28
Taxes and Rents.....	1,061,214 18	.390	18	1,193,312 76	.347	21
Pensions, Relief Funds, etc.....	5,466,894 96	2.010	97	5,296,825 16	1.540	92
Labor Contingency and War Emergency Funds.....	4,010 00	.001	.....	52,510 00	.015	.....
Totals, Departmental Appropriations.....	\$188,663,790 10	69.358	\$33 29	\$216,280,329 20	62.903	\$37 60
State Taxes.....	\$8,539,156 37	3.140	\$1 51	\$22,041,183 27	6.410	\$3 83

DEBT SERVICE						
Interest on the City Debt.....	\$45,544,493 42	16.741	\$8 04	\$47,885,649 53	13.925	\$8 32
Redemption of the City Debt.....	{ 5,534,545 24	5.430	2 61	{ 5,302,045 24	4.225	2 52
Amortization of the City Debt.....	9,225,000 00			9,225,000 00		
Redemption of Special Revenue Bonds.....	\$60,304,038 66	22.171	\$10 65	\$62,412,694 77	18.150	\$10 84
Redemption of Tax Notes.....	8,000,000 00	2.941	1 41	31,000,000 00	9.014	5 40
Interest on Revenue Bills, Tax Notes and Special Revenue Bonds.....	2,300,000 00	.850	41	6,500,000 00	1.890	1 13
	4,207,500 00	1.540	74	5,615,832 53	1.633	98
Totals for Debt Service.....	\$74,811,538 66	27.502	\$13 21	\$105,528,527 30	30.687	\$18 35
TOTAL OF BUDGET APPROPRIATIONS PER SE.....	\$272,014,485 13	100%	\$48 01	\$343,850,039 77	100%	\$59 78
Appropriation Increases 1921 over 1920.....	.....	.....	.....	.....	\$72,125,808 44	44
Appropriation Decreases 1921 under 1920.....	.....	.....	.....	.....	248,893 80	80
Net Increase 1921 over 1920.....	.....	.....	.....	.....	\$71,876,914 64	64
To Provide for Deficiencies in the Collection of Taxes.....	1,675,000 00			1,680,000 00		
GRAND TOTALS.....	\$273,689,485 13			\$345,530,039 77		

# 32 REAL ESTATE PRINCIPLES AND PRACTICES

## City and County Appropriations and State Tax

Appropriations, 1920	
The City of New York.....	\$256,441,440 16
For State Taxes.....	8,539,156 37
<b>Total</b>	<b>\$264,980,596 53</b>
The County of New York.....	4,365,155 12
The County of Bronx.....	1,038,390 34
The County of Kings.....	2,413,908 33
The County of Queens.....	661,664 65
The County of Richmond.....	229,770 16
<b>Total Budget</b> .....	<b>\$273,689,485 13</b>

The Federal Bureau of the Census gave the City's population at Jan. 1, 1920, as 5,621,151. On this estimate the Health Department predicted its estimate of the population at the mid-period of 1920 as 5,665,157, and at the mid-period of 1921 as 5,753,151.

## Assessed Valuations, Tax Levy and Tax Rates, 1921

**ASSESSED VALUATION OF PROPERTY.**—The aggregate Taxable Valuations of property within The City of New York for the year 1921, by boroughs, as certified by Dept. of Taxes and Assessments, are as follows:

	Real Estate	Personal Estate	Totals
Manhattan.....	\$5,878,847,633	\$152,742,600	\$6,031,590,233
The Bronx.....	852,447,403	13,899,700	866,347,103
Brooklyn.....	2,395,486,473	37,741,850	2,433,228,323
Queens.....	718,818,139	7,409,350	726,227,489
Richmond.....	127,385,456	1,428,675	128,814,131
<b>Grand Totals</b> .....	<b>\$9,972,985,104</b>	<b>\$213,222,175</b>	<b>\$10,186,207,279</b>

The amount of taxes imposed by an Ordinance adopted by the Board of Aldermen March 1, 1921, at 2.13 P.M., and approved by the Mayor, is \$283,669,218.49, distributed as follows:

For General City Purposes, viz.: Total Budget Appropriations for 1921 .....		\$313,459,633 54
Less Estimated Revenues of the General Fund.....		63,216,718 87
<b>For New York State Tax</b> .....		<b>\$250,242,914 67</b>
		<b>22,041,183 27</b>



<i>Counties (Boroughs)</i>	<i>County Appropriations Included in the Budget of 1921</i>	<i>County Expenses Paid during 1920 from Special Revenue Bonds</i>	<i>Borough Assessments Pursuant to Sec. 247, G. N. Y. Charter</i>	<i>TOTALS</i>	
New York (Manhattan).....	\$5,010,659 22	\$462,333 57	.....	\$5,472,992 79	
Bronx (The Bronx).....	1,247,990 44	101,281 18	\$47,045 97	1,396,317 59	
Kings (Brooklyn).....	2,745,170 19	252,111 43	.....	2,997,281 62	
Queens (Queens).....	767,177 17	53,932 40	422,872 58	1,243,982 15	
Richmond (Richmond).....	258,225 94	16,320 46	.....	274,546 40	
Totals.....	\$10,029,222 96	\$885,979 04	\$469,918 55	\$11,385,120 55	11,385,120 55
TOTAL TAX LEVY OF 1921.....					\$283,669,218 49
<i>Tax Rates for City and County Purposes State Tax, and Special Assessments on Boroughs</i>	<i>Manhattan (New York Co.)</i>	<i>The Bronx (Bronx Co.)</i>	<i>Brooklyn (Kings Co.)</i>	<i>Queens (Queens Co.)</i>	<i>Richmond (Richmond Co.)</i>
On Real Estate.....	2.77	2.84	2.80	2.85	2.83
On Personal Property .....	2.77	2.83	2.80	2.79	2.83
For City Purposes.....	.018439662060	.018439662060	.018439662060	.018439662060	.018439662060
For County Purposes.....	.000907388031	.00157426134	.001231812728	.001130650632	.002131337593
Total Rates for City and County Purposes.					.020570999653
For Principal and Interest on Debt.....	.019347050091	.019997088194	.019671474788	.019570312692	.020000000000
For State Taxes.....	.006127176981	.006127176981	.006127176981	.006127176981	.006127176981
	.002163826306	.002163826306	.002163826306	.002163826306	.002163826306
Decimal Rates on Personal Property.....	.027638053378	.028288091481	.027962478075	.0278661315979	.028291003287
Special Assessments on Boroughs.....	.....	.000055189293	.....	.000588288688	.....
Decimal Rates on Real Estate.....	.027638053378	.028343280774	.027962478075	.028449604667	.028291003287

must be made against the names of the owners for some time past in order to ascertain the existence of arrears.

It has been noted that taxes in New York City by law become liens on the property on May 1st and November 1st in each year. As between buyer and seller the one owning the property on the day the tax becomes a lien usually pays it. It is the rule in many other places that the tax is a charge as soon as definitely determined, even though not due until a later date. The budget, assessed values, and tax rates for New York City for the year 1921 are shown by the tables on pages 30 to 33 inclusive.

### ASSESSMENTS

**Definition of assessments.**—Assessments are charges upon real property benefited by a local improvement to pay all or part of the cost of such improvement. They do not recur regularly as taxes do, and they are not apportioned according to the value of the property affected. For example, all lots fronting on a certain street are benefitted by the paving of the street and are equally assessed for it, even though the corner lots may have a greater value than inside lots. Buildings are not considered in apportioning the assessment, it being assumed that the land receives all the benefit. Sometimes assessments are spread over a large area, the property nearest to the improvement being charged with a greater proportion of it than property more remote, the rate decreasing with the distance from the improvement.

**How assessments are levied.**—Assessments must be levied according to law and therefore due notice must be given to the property owners in order that the proceedings be valid and the resulting charge on the property be an enforceable lien. The notice is usually given by advertisement.

There are two methods of procedure for laying assessments for local improvements, one a proceeding by authority of the courts, and the other an action taken by a board of assessors.

**Assessments laid by authority of the courts.**—The proceeding under which land is taken for public purposes is called a condemnation proceeding. The property is said to be "condemned" and the proceeding is for the purpose of obtaining title to it and determining the amount to be paid the owners for the land taken. When the appropriation of the land for

a public purpose benefits other land, part or all of the cost of the proceeding (including the damages paid to the owners of the land taken) is assessed upon the land benefitted. The various parcels of land taken are called "damage parcels" and the various parcels upon which the assessment is laid are called "benefit parcels."

The proceedings may be in court or before commissioners appointed by the court. An opportunity to be heard is given to all owners whose property is affected. If the hearings are before commissioners, they must present a report for confirmation and the property owner may file objections to it, and the courts will determine the merits of any such objections. Upon completion of the proceedings the awards and assessments are fixed. The assessments are thereafter entered in an assessment book and become liens on the property affected, that is to say the "benefit parcels" of the condemnation proceedings.

Examples of condemnation proceedings under which assessments are levied are those for opening and widening streets, and for acquiring land for public parks and playgrounds.

**Assessments laid by board of assessors.**—Many local improvements are made by public officials, acting on the initiative of the property owners or their representatives. Such improvements include sewers, sidewalks, grading, curbing, and paving streets. Notice of intention to do the work is given, and notice of the assessment levied to pay the cost is also given. Property owners may object to the assessment upon their property and may carry their objections to the courts.

Assessors are often limited as to the amount of any assessment they may lay to a fixed percentage of the value of the property assessed. This rule acts as a safeguard to the owner and may prevent actual confiscation of the property. It may however, in some cases, retard the improvement of suburban districts by preventing the performance of necessary work.

**When assessments become liens.**—Assessments become liens when they are definitely known and fixed. In some cities by statute they become liens ten or more days after being confirmed and entered. By provision of law in some States an assessment of large amount (usually three to five per cent or more of the assessed value of the property) may be divided into installments payable over a period of five to ten years or

more. Interest is charged on the deferred installments at five to seven per cent per annum and on due and unpaid assessments the interest ratio is increased.

**Water rates.**—Water is a commodity sometimes furnished by a private company and sometimes furnished by the municipality. When furnished by the municipality the charge for it is enforced in a manner similar to the charge for taxes, that is to say, the charge becomes a lien on the property. There are two methods of making the charges, one a flat rate per annum based on the size of the building to which the water is furnished, and taking into consideration the outlets for water supply in the building. The second method of making charges is by the installation of a water meter which measures the actual amount of water consumed, the charge being fixed at so much per cubic foot. The charge for water at the flat rate usually becomes due and payable and a lien on the property on January first or some other fixed day in each year, and penalties are added if the charges are not paid within a certain time. Charges for water on meter become due as the meters are read and the charges entered on the books of the Water Department.

**Enforcement of lien of taxes.**—There are several methods of enforcing the payment of taxes. The property may be sold at public auction. At such auction sale the property is struck down to the highest bidder. The sale, however, is subject to the right of the former owner to redeem the property from the sale by paying the amount of taxes, penalties, and interest within a certain time. Sometimes the sale takes the form of a lease of the property for a period of years. In the City of New York at present the law permits the City to sell a lien on the property after taxes, assessments or water rates have remained unpaid for a certain time. A list of all properties upon which there are arrears of taxes, assessments or water rates is made up and the date of sale advertised, and at such sale the purchaser acquires not the property itself but a lien upon it. The bidding at the sale is by rates of interest, the person bidding the lowest rate of interest (which must not be more than twelve per cent) becomes the owner of the lien. He then has what is practically the same as a first mortgage on the property and which has three years to run and bears interest at the rate he bid at the sale. The interest is payable semi-annually. If there is a default in the payment

of interest, or in the payment of subsequent taxes or assessments on the property or if the principal is not paid at maturity the lien may be foreclosed by an action similar to an action for the foreclosure of a mortgage. By this method of enforcing the payment of taxes, assessments and water rates the City has been successful in obtaining the payment of the arrears. The only disadvantage that may be noticed about this method of enforcing payment of taxes is the fact that it has allowed certain people to purchase the tax liens, not for the purpose of making an investment at a fair rate of interest, but rather for the purpose of making a profit through charges for legal services in connection with the foreclosure of the liens. In an action to foreclose the lien the owner and all persons interested are made parties to the action, and must be served. This gives the owners notice and an opportunity to pay the liens, penalties, legal charges, and interest, and thus avoid actual sale of the property.

## CHAPTER V

### CONTRACTS

**Importance.**—Sales, purchases and exchanges of realty are continually being made and engage the attention of owners, purchasers and brokers. These transactions usually are voluntarily entered upon and almost without exception are initiated by a contract embodying the terms of agreement. Consequently a thorough working knowledge of the contract, its purpose and effect, is essential to the owner who is about to sell, the proposed purchaser and the broker who is presumed to be protecting the interests of one or both parties to the transaction.

**Definition.**—A contract for the sale or exchange of real estate must contain the attributes of any legal contract. Legally defined, a contract is a deliberate engagement between competent parties, upon legal consideration, to do or abstain from doing some legal act. An examination of the foregoing definition reveals four elements necessary for any contract:

1. Competent parties.
2. Offer and acceptance.
3. Consideration.
4. Legality of object.

Contracts involving real property have one additional requisite:

5. Must be in writing and signed.

**Competent parties.**—Naturally there must be at least two parties to a contract; a man could not make an enforceable contract with himself. The parties must meet on the same mental plane; an idiot, or insane person cannot make a binding contract, he not knowing the nature of his act or what he signs. A delusion upon one subject may, however, not incapacitate him, as he may be thoroughly intelligent as to other things. They must meet on the same legal plane; an infant cannot be bound by his contract. He may sell his realty, receive and spend the price paid him, then disaffirm his contract and a court will restore to him his property.

The question of competency, from a practical viewpoint, concerns more particularly the legal capacity to sell of executors, trustees and persons acting under a power of attorney.

They have only such rights and privileges as may be given them by the instrument appointing them. Care should be taken to have them produce and to examine such instrument before entering upon a contract with them. It may be they are restricted as to price, terms, time within which to act, or in some other way, which would prevent their consummation of the contract.

A corporation which is about to sell real estate authorizes its president or other officer by by-law or resolution to execute the contract. Customarily the purchaser does not insist upon seeing the original or a certified copy of such by-law or resolution but assumes the fact that the officer has authority to execute the contract since he is in possession of the corporate seal which he impresses upon the contract. There is no reason, however, why inquiry concerning the officer's authority should not be made, particularly if the purchaser is paying a considerable deposit on the signing of the contract. Where the sellers are co-owners (joint tenants, tenants in common, or co-partners) it is advisable that the purchaser insist upon all the owners signing the contract.

**Offer and acceptance.**—The contract must create future obligations. "A" gives a deed of his house to "B." There is no contract; the transaction is complete. The theory and intent of a contract is to create a binding obligation upon each of the parties to do or abstain from doing something in the future. If the thing is done, it would be nonsense to attempt to contract with reference to it. Naturally, also, the offer and acceptance must relate to a specific thing, known to both parties. No contract is created if each has a different thing in mind. There is no meeting of the minds under such circumstances. A mutual mistake will avoid the agreement.

**Consideration.**—The promise of the one party to the contract must be supported by an undertaking of the other. Each must obligate himself. Each must put some consideration into the agreement. A mere promise would not be binding upon its maker. A, seeing his good friend B, says to him, "B, I will give you my house to-morrow." B cannot enforce the delivery of the house. But if A had made offer to give B the house if B would cease the use of tobacco for one week, then there is a mutual obligation or consideration and B, having performed his promise, can enforce delivery of the house to him. In real estate contracts the usual situation is that the

seller promises to sell and convey realty and the purchaser accepts the offer and creates the mutual obligation by agreeing to pay a certain price for the realty. A more extended discussion of the various kinds and adequacy of consideration will be found in the chapter on deeds.

**Legality of object.**—An agreement to be an enforceable contract must contemplate the attainment of an object not expressly forbidden by law nor contrary to public policy. For example: An agreement for the sale of realty to be used expressly for the sale of alcoholic beverages is unenforceable as its object is contrary to law. So also an agreement by which A, a confirmed woman hater, promises B a house for B's promise never to marry, is against public policy, as discouraging marriage, and therefore unenforceable.

**Necessity of writing.**—The contract for the sale of real property is expressly required by law to be in writing and signed by the party to be bound by it. This is the old "Statute of Frauds" in its present form, and is intended to prevent fraudulent proof of a fictitious verbal contract, thereby depriving the owner of valuable realty. Practically, for commercial reasons a written contract is a necessity in a real estate transaction. There are usually many terms and provisions agreed upon and it would be impracticable to attempt to carry them all in one's memory. Even aside from the opportunity for fraud, natural forgetfulness would give rise to innumerable disputes.

The writing may be upon any lasting substance, made with anything from stylus to paint brush and in any language, which can be translated into English. Care must be had, however, to see that all the provisions are embodied in the contract, for after it is once signed, nothing can be added to it except by consent of all parties. Anything left out of the written contract, even though agreed upon in the discussion leading to the contract, is unenforceable. Care should also be taken to see that the various provisions state explicitly what is intended. No explanation can later be given to change the meaning of a provision which on its face appears clear. The words as put into the instrument may mean something entirely different from what was intended, yet, if the error does not appear from reading the contract, no explanation can be given.

**Form of contract.**—The following is the form of contract of sale used by the title insurance companies of New



York. Other forms are in use and it is not compulsory to use this form. However, it contains in its printed portion substantially all the provisions commonly used; the blank spaces to be filled in with the matter peculiar to each transaction.

CONTRACT OF SALE

AGREEMENT, made and dated  
between

hereinafter described as the seller, and

hereinafter described as the purchaser,

*Witnesseth*, that the seller agrees to sell and convey, and the purchaser agrees to purchase all that lot or parcel of land, with the buildings and improvements thereon, situate, lying and being in the Borough of

County of City and State of New York,

The price is

Dollars, payable as follows:

Dollars on the signing of this contract, the receipt of which is hereby acknowledged.

Dollars in cash or certified check on the delivery of the deed as hereinafter provided.

The deed shall be delivered upon the receipt of said payment at the office of

at o'clock M., on 192

Rents and interest on mortgages and insurance premiums, if any, are to be apportioned.

The seller agrees that brought about this sale and agrees to pay the broker's commission therefor.

If there be a water meter on the premises, the seller shall furnish a reading to a date not more than thirty days prior to date herein set for closing title and the unfixed meter charge for the intervening time shall be apportioned on the basis of such last meter reading.

This sale covers all right, title and interest of the seller, of, in and to any land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining said premises, to the centre line thereof, or all right, title and interest of the seller in and to any award made or to be made in lieu thereof, and the seller will execute and deliver to the purchaser on closing of title, or thereafter on demand, all proper instruments for the conveyance of such title and the assignment and collection of such award.

The deed shall be in proper statutory form for record, shall contain the usual full covenants and warranty, and shall be duly executed and acknowledged by the seller, at the seller's expense, and in form for recording, so as to convey to the purchaser the fee simple of the said premises, free of all incumbrances except as herein stated, and except restrictions imposed by the City of New York under resolution of the Board of Estimate and Apportionment, adopted July 25, 1916, and acts amendatory and supplemental thereto.

## 42 REAL ESTATE PRINCIPLES AND PRACTICES

If there be a mortgage on the premises and such mortgage has been reduced by payments on account of the principal thereof, then the seller agrees to deliver to the purchaser at the time of delivery of the deed a proper certificate executed and acknowledged by the holder of such mortgage and in form for recording, certifying as to the amount of the unpaid principal sum of such mortgage and rate of interest thereon, and the seller shall pay the fees for recording such certificate.

All notes or notices of violation of law or municipal ordinances, orders, or requirements noted in or issued by the Tenement House or Building Department or Health Department against or affecting the premises at the date hereof, shall be complied with by the seller and the premises shall be conveyed free of the same. The seller shall furnish the purchaser with an authorization to make the necessary searches therefor.

All personal property appurtenant to or used in the operation of said premises is represented to be owned by the seller and is included in this sale.

All sums paid on account of this contract and the reasonable expense of the examination of the title to said premises are hereby made liens thereon, but such liens shall not continue after default by the purchaser under this contract.

The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the seller.

The stipulations herein are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

*Witness* the signatures and seals of the above parties.

In Presence of

(L. S.)

(L. S.)

(L. S.)

**Divisions of contract.**—An examination of the form shows that the contract falls into five general divisions.

1. Statement of parties.
2. Description of property.
3. Financial statement.
4. Closing date and place.
5. Miscellaneous provisions.

While it is not necessary to use the form set forth, nor any other particular form, the contract should contain at least the first three divisions. If no closing date and place is fixed, a reasonable time is presumed to be intended, sufficiently in the future to enable the seller and purchaser to prepare to complete the transaction. While the miscellaneous provisions are not absolutely vital, their absence from the contract may give rise to dispute and inconvenience. Experience shows the advisability of using a printed form, filling in the blanks.

The contract is usually prepared in duplicate so that each party may retain a copy. In opening the first words are "Agreement, made and dated ..... 192..." The word "Agreement" is not necessary. If the writing contain the necessary elements it is a contract whether so labelled or

not. Nor is the date necessary. Without the date, it would be just as binding. Dating the instrument is convenient as a memorandum of the fact, however, and is usually done.

**Statement of parties.**—Following the date, the words “between ..... hereinafter described as the seller, and ..... hereinafter described as the purchaser,” indicate the place for insertion of the names of the seller and purchaser. The names of both should be correctly written and for convenience should be followed by the address of each, as it is usually necessary to have the addresses of each party for use in preparing the instruments later required to consummate the contract.

Each of the parties approach the bargain from a different viewpoint. The seller is about to undertake to deliver his realty at a future date upon payment of an agreed price. Until the closing of title he obligates himself not to seek other sale, although he has only a small part of the price in the form of a deposit. The purchaser on his part is about to pay a deposit to secure the property and will incur additional expense in examination of title, as well as abandoning further search for a location. Each of the parties, therefore, is interested in the financial capacity and good faith of the other.

The seller wishes to be sure his purchaser can and will fulfill the contract. This is so particularly if the market is falling, for if the purchaser later default, the seller will very probably sustain a loss. If the market is rising the danger is much less, as, in case of the purchaser's later failure to complete the contract, the seller has an opportunity to sell at a greater price. Of course, the seller may protect himself to some extent by requiring a larger deposit when he has any doubt as to his purchaser's good faith or knows him to be a “dummy.”

The purchaser should at once satisfy himself that the person recited as the seller owns the property. He should know that the person to whom he pays his deposit has the right to sell the realty. He may and should ask the seller to produce indicia of his ownership. This the seller usually does by exhibiting his deed of the property. Or if opportunity offers the purchaser may examine the public records and get sufficient information to justify payment of the deposit. If the seller is an executor, trustee, attorney or agent, he should show the instrument appointing him as such, so that the purchaser may be satisfied that he has power and authority to sell.

If the seller does not produce proof of his ownership and authority to sell, it is often advisable to deposit the initial payment, which would in ordinary course be delivered on signing the contract by the purchaser to the seller, with some third person agreed upon to hold in escrow until the seller produces such evidence. Occasionally the seller has not title but has contracted to buy from the owner, and is now undertaking to sell before he has taken title. In such a case the purchaser must consider this third person before he signs a contract. He will best protect himself by paying only a small deposit, and having the contract provide for a definite closing date without right of adjournment.

"Witnesseth," the word following the names of the parties, means nothing legally or practically and might just as well be left out. Anciently it had a meaning and it survives only because it usually has been used.

"That the seller agrees to sell and convey." These words are the seller's promise. He promises not only to transfer his rights but also to deliver the necessary instrument (deed) to transfer his title. "And the purchaser agrees to purchase" creates the mutual obligation by the purchaser's acceptance of the seller's offer, thus completing the consideration which supports the contract.

**Description of property.**—"All that lot or parcel of land with the buildings and improvements thereon," are the formal opening words of the description of the property. "All" indicates that the contract is intended to cover every particle of the land described in detail following. "With the buildings and improvements thereon," while not legally necessary, should always be included to contradict any presumption of an intent to except from the sale, any of the structures on the land.

Next follows the specific description of the realty. The description is the most important as well as the most difficult part of the contract. While it is not necessary to describe the realty in as much detail in the contract as in the deed, nevertheless legal rights are being created by the contract and it is of importance that a proper description be used.

Descriptions are of four kinds:

1. By street numbers of house.
2. By lot number on a map.
3. By metes and bounds.
4. By monuments.

**Street numbers.**—A description by street number would be merely following the printed part of the contract, by the words "known as and by the number 31 East 31st Street." Such a method of description should never be used in a deed or mortgage but is sufficient for a contract. It should not be used to describe a vacant lot or plot.

**Lot number on map.**—Quite often the owner of a tract of vacant land has developed it by cutting through streets and subdividing it into lots upon a map which he has filed in the proper county office. The map shows the various blocks and lots, numbered for convenience of identification, and the map bears usually a title, the owner's and surveyor's name and the date of survey. For example:

Map of land at Mineola, Nassau Co., N. Y. Property of James Smith. Surveyed by John Jones, C. E., dated June 1st, 1921

*Merrick Road*

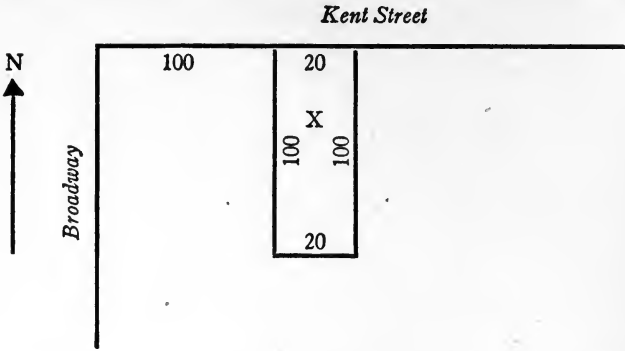
1	2	3	4	5	6	7	8
		B	L	O	C	K	B

1	2	3	4	5	6
	B	L	O	C	K
				A	

*Land of Williams*

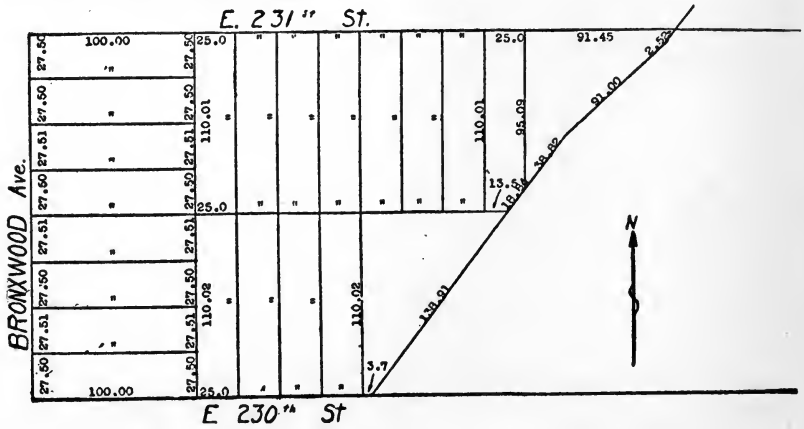
The simplest manner of describing a lot upon this map would be "All that certain lot, piece or parcel of land, known upon a 'map of land at Mineola, Nassau County, N. Y., the property of James Smith, John Jones, surveyor, June 1st, 1921' as and by the lot number 7 in Block B." Such a description fully identifies the lot and reference to the map on file will always show the exact location of the lot. The surveyor always, in making such a survey, uses some permanent landmark upon the plot so that all lots may be physically located by measuring from it.

**Metes and bounds.**—A description by metes and bounds is usually found in the cities. Metes—measures, and bounds—direction, make possible a description of such accuracy as is requisite in locations where land is of considerable value, and boundaries must be definitely fixed. Suppose upon the following diagram the realty to be sold is the lot X. A description of this lot would read "Beginning at a point on the southerly side of Kent Street, 100 feet easterly from the cor-



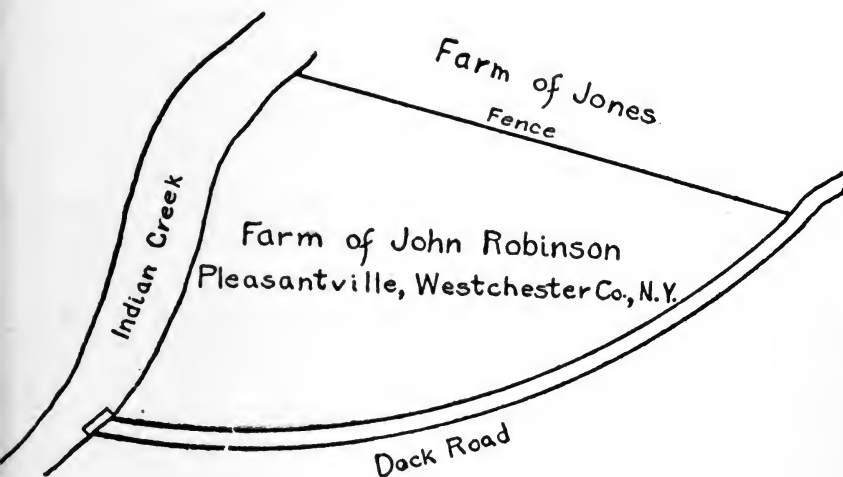
ner formed by the intersection of the southerly side of Kent Street and the easterly side of Broadway; thence southerly parallel to Broadway 100 feet, thence easterly parallel to Kent Street 20 feet, thence northerly parallel to Broadway 100 feet to the southerly side of Kent Street, and thence westerly along the southerly side of Kent Street, 20 feet to the point or place of beginning.” That gives an exact description, each side being meted, i.e., measured in feet and bounded i.e., direction indicated. It is most import in such a description that the point of beginning be carefully identified to avoid uncertainty of location. The entire description is worthless if there is an error in the starting-point.

The property just described is what is known as a regular lot; that is the front and rear dimensions are the same, also the sides, and the angles formed are right angles or nearly so. Many times it is necessary to draw a description of an “irregular lot,” such for example as the southerly triangular lot shown on the following diagram.



A description of this irregular lot would read as follows: Beginning at a point on the northerly side of East 230th Street, 200 feet easterly from the corner formed by the intersection of the easterly side of Bronxwood Avenue and the northerly side of East 230th Street, running thence northerly and parallel to Bronxwood Avenue, 110 and 2-100 feet, thence easterly parallel to East 230th Street, 88 and 50-100 feet; thence southwesterly, 138 and 91-100 feet to a point on the northerly side of East 230th Street, which point is 3 and 70-100 feet easterly from the point or place of beginning, and thence westerly along the northerly side of East 230th Street, 3 and 70-100 feet to the point or place of beginning.

**Monuments.**—Outside the populous districts the description by monuments is most often found. There are but few highways and little necessity for exact measurements. A farm for example is shown.



This farm may be described without mention of metes or bounds as follows: The farm of John Robinson at Pleasantville Westchester County, N. Y., bounded and described as follows: Beginning at the dock on Indian Creek at the foot of Dock Road, thence along Dock Road to the point where said road is met by the fence dividing the farms of (the seller) and Jones, thence along said fence to the side of Indian Creek, and thence along said Indian Creek to the Dock, the point of beginning.

**Selection of form of description.**—The first and second forms of description are often used alone. The third and fourth are usually combined. The first or third are sometimes used to supplement the third or fourth or a combination of the third and fourth.

It is sometimes difficult to decide what form of description to use. The contract is to create binding obligations and rights. The seller must use a description under which he can convey good title and the purchaser wants a description that will give him the realty he intends to buy.

**Use of terms "more or less."**—The seller should use care to undertake to convey only what he owns. As a general rule he should use the same description as was used when he bought. If he has reason to believe that he has not as much depth or width of land as his deed calls for, he may then use the words "more or less." "More or less" is a question of reasonableness. Sometimes a variance of a few inches is unreasonable, as in the width of a city lot, while a foot might not be unreasonable in the depth of the same lot. If the variance is reasonable the seller can give good title under a description using the words "more or less." The purchaser in case of the use of "more or less" will often have the contract provide minimum dimensions or area, less than which he will not take. If a house is standing on the lot a small variance makes little difference for the building will remain and produce rent, whether it is slightly wider or narrower than the lot.

**Description of improved property.**—A purchaser in offering to buy improved property is always presumed to be intending to purchase three things: 1. the land, 2. the structure, capable of occupancy and rentable, and 3. the right to maintain it. If the building stands in from the lines on all sides there is no difficulty. But in the cities a building is usually constructed to fill the entire width of the lot.

If the building exactly fills the lot, not encroaching on either side, the seller may use any description which accurately describes the land; the building will pass with a description of the land. The purchaser may, if he wishes to be sure he is signing a contract for the house he has in mind, have inserted after the description the words "known as and by the house number . . . . . Street."

Suppose, however, that the building not only fills the entire lot, but encroaches on the lot alongside. If the encroachment



is not in excess of a few inches or the building has been standing for many years, an easement has arisen permitting the building to remain. In such case a description by street number would be improper as the seller does not own and cannot convey the building and all the land upon which it stands. He should use a description which will describe the land which he owns just as if it were a vacant lot; the building and easement will follow with the land so described. The seller is protected for he is only undertaking to give what he has and the purchaser gets what he intended to buy.

Occasionally the building on the lot alongside encroaches on the seller's land, so that the seller has possession of less land than called for by his deed. How shall he then sell safely? He may use a description taking in only so much land as is actually in his possession, diminishing his width dimensions as much as necessary. He may use the description called for by his own deed using "more or less" following the width dimensions. Or he may describe merely by house number. Under any of those descriptions he can give what he contracts to convey.

**Limitations and restrictions.**—It is customary to follow the description with a statement of the limitations subject to which the property is to be sold. The most common is tenancies. If nothing is mentioned in the contract concerning tenants, the purchaser is entitled to receive an empty house. Consequently if there are tenants in the building, the nature of their rights should be set forth in a provision that the property is sold subject to the rights of the tenant or tenants and specifying rent, duration of lease, space occupied and any peculiar facts with reference to each tenant. The seller protects himself by merely stating that he sells subject to the tenants' rights, but the purchaser should insist on full details being set forth.

Any restrictions or limitations upon the use of the property should also be stated at this point. If none is mentioned the purchaser is entitled to the realty free and clear of any such. The seller to protect himself must see that they are enumerated. The seller's land and the neighborhood may be restricted for mutual benefit, to buildings of certain size, character and price. The neighboring owner may have an easement to use the side wall as a party wall. There may be an agreement between the seller and an adjoining owner whereby

each undertakes to maintain one-half of a joint driveway between their buildings. The seller may have given consent to trolley or elevated railways or for the maintenance of electric or telephone wires or poles. A survey of the property may show encroachments or other variations. These are examples of restrictions or limitations which the seller should have inserted in the contract.

It cannot be too much emphasized that the seller is legally bound to give an absolutely clear title free from all encumbrances except those specifically mentioned in the contract. Any encumbrances upon the property which the seller fails to except, he must remove; hence the care he should use in making certain to state those encumbrances subject to which he sells the property. The following is an illustration of the statement:

"Subject to the rights of present tenants as monthly tenants; to covenants and restrictions of record and to any state of facts an accurate survey may show."

This clause may be readily altered to cover any encumbrances, or amplified if the purchaser require a more detailed statement.

**Financial statement.**—Next upon the form appear the words "the price is . . . . . ." These open the financial statement. Here is set forth all the provisions with respect to amount and terms of payment, of the purchase price. Following the opening words the total price to be paid should be inserted. This total or gross price is divided into

1. Deposit on contract.
2. Cash on closing.
3. Existing mortgages.
4. Purchase money mortgage.

It is not necessary that every contract contain all four divisions of the total price. There is nearly always provision for a deposit on signing the contract and for cash on the closing. Sometimes no agreement for a purchase money mortgage is made, it being agreed that the purchaser shall pay all cash over the existing encumbrances. Or it may be that there is no encumbrance on the property, and the purchaser is to pay all cash, in which event only the first two divisions would be present.

**Deposit on contract.**—The deposit is the amount paid by the purchaser to the seller as earnest money. Its amount

varies, being usually from 5 per cent to 10 per cent of the price. This deposit is forfeited to the seller if the purchaser defaults in carrying out the contract. Its amount is, therefore, always an important question to be agreed upon by the parties, and is regulated by various considerations. Their confidence in each other may reduce it. A long time between the date of the contract and the date agreed on for the closing of title should increase it, for during this period the property is really the purchaser's and the seller cannot seek other sale for it. The deposit should be large enough to compensate the seller for any commission which he must pay on the sale and to make it worthwhile for the purchaser to complete his contract, even if he repent of his bargain. The seller should also endeavor to have a large enough deposit so that the balance to be paid is less than the property's value, so that in event of the purchaser's default he has made some profit on the deposit alone. The purchaser naturally having nothing till delivery of the deed is anxious to make as small a deposit as possible. The payment of the deposit is acknowledged in the contract; no separate receipt is necessary. Payment of the deposit is usually by check and not usually certified. Title does not pass and if the check should be unpaid the contract could be avoided by the seller. However, if the seller is making a very good bargain and does not wish to lose the sale, he may insist upon receiving the deposit in cash or certified check.

**Cash on closing.**—The cash on closing is the amount to be paid by the seller upon delivery of the deed. "..... dollars in cash upon the delivery of the deed as hereinafter provided." Some forms provide for payment in either cash or certified check. This is unwise. Some banks may be quite unsound; their certification being of no value should they suddenly fail. The seller should insist upon the contract providing for payment in cash, then if he wishes, he may on the closing take a certified check. Since the deed and possession of the property are to be delivered on the closing, nothing less than cash or certified check should be taken by the seller. The amount of cash to be paid on the closing of title naturally will be the difference between the total price and the deposit if there is no provision for existing encumbrances or purchase money mortgages. If there are such it is the difference between the total price and the sum of the other items.

**Existing mortgage.**—Nearly all improved properties in the built-up districts are mortgaged for part of their value. These mortgages usually remain on the property indefinitely. Most contracts of sale, therefore, involve in their financial statement an existing mortgage. The mortgage is always accompanied by a bond, or note, under the terms of which the original borrower or some late owner, who has secured an extension of its time of payment, has undertaken to pay the amount of the loan which the mortgage was given to secure. The purchaser may take the realty subject to this mortgage or he may assume its payment. In either event to prevent foreclosure of the mortgage he must pay the interest. If, however, he merely buys subject to the mortgage he undertakes no personal obligation to pay the loan, while if he assumes the mortgage he becomes personally liable for the loan, and should the property under foreclosure not bring sufficient to pay the mortgage, interest and expenses, he would be personally liable for the deficiency. For obvious reasons the purchaser usually endeavors to have the contract provide that he take subject to the mortgage. In actual experience the purchaser seldom assumes the mortgage.

The purchaser, in order to know what he is buying, should always secure a full detailed statement of the terms of the existing mortgage, particularly the principal amount, interest rate, interest payment dates, name of the mortgagee, and the date when the principal of the mortgage is payable. This last is very important. The purchaser must know when he may be compelled to pay or renew the mortgage. Possibly he can not pay it and has reason to believe he could not procure a new loan for as great an amount. He wants to have time to prepare. He might not buy at all if the mortgage were to become due very soon. If, on the other hand, he thinks the mortgage is low; that he could procure a larger loan, he is desirous that it become due shortly. If, in any way, the seller has any control over or option in respect to the mortgage or any of its terms the purchaser should see that the contract make proper provision to protect his desires or requirements.

**Purchase money mortgage.**—The purpose of a purchase money mortgage is to take the place of cash for part of the price. The purchaser may not have sufficient cash to pay the full price over the existing mortgage, and the seller may be willing to leave part of the price as a loan to the purchaser.

In order that the seller may be protected from loss upon the loan, the purchaser makes the loan a lien upon the property. The purchaser gives his bond for the amount agreed upon and a purchase money mortgage pledging the property as security. No general rule can be made as to a safe amount to leave on purchase money mortgage. However, in any event the seller should always see that he receives enough cash to more than pay the cost of foreclosing the mortgage and to more than cover any depreciation in the property, accrued interest and unpaid taxes.

As to the purchase money mortgage, the contract should specify the date and manner of payment of the principal sum, the interest rate, interest payment dates, and the seller should require an appropriate form of bond and mortgage, such as in its incidental provisions will give him full protection; particularly with reference to default in the existing mortgage. For this reason also the contract should provide that the bond and mortgage be prepared by the seller's attorney. Since the purchase money mortgage is taken by the seller as an accommodation to the purchaser, it is customary to provide that the purchaser shall pay all expenses in connection with it, consisting of cost of drawing the instruments, the recording fees, the mortgage tax (if any) and the internal revenue stamps on the bond. The purchaser should always seek a provision that the purchase money mortgage shall be and remain subordinate to the present existing mortgage or any mortgage to secure a similar amount in event of payment thereof.

The following is an example of financial statement embracing all the parts:

The price is \$20,000 payable as follows:

\$1,000 on the signing of this contract, the receipt of which is hereby acknowledged.

\$4,000 in cash on the delivery of the deed as hereinafter provided.

\$10,000 by the purchaser taking title to the premises subject to a mortgage now a lien thereon for that amount due.....bearing interest at the rate of..... per cent per annum, payable semi-annually on..... and..... (If purchaser assumes the mortgage add "which the purchaser shall assume and promise to pay.")

\$5,000 by the purchaser executing and delivering on the closing of title, his bond for that amount secured by his purchase money mortgage, payable .....with interest from the date of closing title at the rate of .....per cent per annum, payable semi-annually.

Said bond and mortgage shall contain a provision that this mortgage shall be and remain subordinate to the present first mortgage, or in event of its

payment, to any new mortgage for an amount not in excess thereof; to be drawn upon the usual (here insert "Title Co." or other identifying words) forms by the attorney for the seller at the purchaser's expense, who shall pay the recording fees, mortgage tax (if any) and for internal revenue stamps on the bond.

**Installment contracts.**—In some instances, particularly in the sale of vacant lots, it is found that the purchaser has not sufficient cash to pay a deposit and within the usual period take title, paying the balance. Possibly the purchase does not seem desirable on those terms. Yet he would be willing and able to pay the price in installments. In such events it is usual to have the financial clause provide for times and amounts of installments at stated intervals, and the payments to be applied first to interest on the purchase price, then to payment of charges such as taxes as they accrue, and finally towards payment of the unpaid balance of purchase price. Under such a contract it is usually agreed that the deed shall not be delivered until a certain amount has been paid upon the price. The usual custom is for the purchaser to give a purchase money mortgage for the balance of the price, the mortgage to be paid in such manner as may be agreed upon. For the seller's protection, the contract should also provide that in event of a default in payment by the purchaser, the contract be cancelled and all sums paid by the purchaser be deemed rent for the period from the time he took possession up to the default. (Appendix forms 12 and 13.)

**Closing date and place.**—Following the space for the financial statement appear the words "The deed shall be delivered upon receipt of said payment at the office of..... at..... 19... The blanks should be filled with the place and time at which title is to be closed. The place of closing should be agreed upon; there is no governing custom. Usually the office of the attorney representing either party, a title company or the broker's office is selected. If no time is set a reasonable time is assumed to be intended. For convenience a date and hour is ordinarily set. Unless the contract specifically provides that time is "of the essence," either party is entitled if need be to an adjournment for a reasonable time.

**Miscellaneous provisions.**—The first of these appears usually in the paragraph setting the closing date. It is customary to arrange as far as possible for the seller's interest to

cease and the purchaser's commence on the day the title is closed and the deed delivered. Hence the provision "rents" and interest on mortgages and fire insurance premiums, if any, are to be apportioned. Under this stipulation while the seller may have collected rents covering a period extending beyond the date of transfer, he must pay or allow to the purchaser the fair proportion of the rents which will be earned after the transfer. So, too, the interest on the existing mortgage, if there be one, has been accruing since the last interest date, and on the next interest date the amount of interest for the full period will be payable. The seller allows to the purchaser the fair proportion of the interest which has accumulated up to the date of closing title. Fire insurance policies are paid for in advance for a period of usually several years. Of course the seller might cancel his policies and the purchaser secure new ones. But the surrender value is less than the proportion of the premium for the remaining period, hence the seller usually seeks to have the purchaser take over the present policies and pay the seller the proportion of the premium for the time remaining till expiration.

The contract may, if agreed upon, provide for adjustment of other items. Of these, the most common are land taxes. Land taxes are levied for a certain definite period, and depending upon the law of the place where the property is located, may be payable at the beginning of the period, during it or at its expiration. In some States, the law provides that taxes shall be adjusted unless the contract specifically provides to the contrary. In New York City and many other places the reverse is true; unless the contract directs an adjustment, the seller shall pay all taxes due prior to the date of closing title. For example: In New York taxes are levied for the calendar year; one-half payable May 1st and one-half November 1st. Suppose title is set to close June 1st. If the contract make no mention of adjustment of taxes, the seller must pay the half due May 1st, although that covers the period to July 1st. If the contract provides for adjustment of taxes, the purchaser would have to pay the month of June, or one-sixth of the amount due May 1st. In New York City it is now becoming customary to provide for adjustment of taxes, particularly in cases where valuable properties are concerned.

**Provision for broker's commission.**—The form of contract under discussion contains as its next paragraph, "The

seller agrees that..... brought about this sale and agrees to pay the broker's commission therefore. This provision is entirely unnecessary to the validity of the contract. Its omission does not even affect the broker's claim for commission. He becomes entitled to his commission as soon as he has brought about the agreement. The only object gained by its insertion in the contract is as a specific declaration by the parties that the broker brought about the sale.

**Apportionment of water charges.**—Water is a commodity furnished by either the municipality or some private agency. If charged at a flat rate according to "frontage" and equipment in the building, there is usually no apportionment of the charge. If however, as is becoming the case of late years, a meter is installed, and a charge made on actual water used, then it is customary to make an apportionment. Readings are taken and bills rendered usually quarterly. It is a simple matter to compute the probable amount of water used since the last reading, and the charge for this should be allowed by seller to purchaser. For great accuracy the contract may, as in the form given, require the seller to furnish a reading made within thirty days of the closing date.

**Street rights.**—The next paragraph is a specific declaration by the seller that he intends his sale of the premises described in the contract to include, and will convey also, whatever rights or title he may have to the center line of any adjoining street. The principal value of such right or title is that should the municipality ever take title to the street an award would be payable to the owner. The award might be considerable and the purchaser should always see that the contract contains this agreement. In addition further to accomplish this purpose the same paragraph further assigns and obligates the seller to assign to the purchaser any award already made.

**Form of deed.**—"The deed shall be in proper statutory form for record," etc. This is most important. At no place in the contract up to this point has the seller stated any particular form of deed he would deliver. He might give any kind of deed which was sufficient to pass title. He must under this clause use the form prescribed by law and which is short, contains no useless verbiage and is therefore more satisfactory and cheaper to record. In the form of contract under discussion, it further provides that the deed shall contain the



usual covenants and warranties by which the seller guarantees to the purchaser the title and the rights conveyed by the deed. These covenants are very valuable to the purchaser. A discussion of them will be found in the chapter on Deeds. It is usual, though not compulsory, for the seller to agree to give such a deed. Occasionally the seller will give no covenants and the contract must then be altered to so state. The purchaser in such case should seek advice as to whether or not he may safely take the form of deed which the seller desires to give.

The deed "shall be duly executed and acknowledged by the seller at the seller's expense, and in form for recording." The seller obligates himself to sign and deliver the deed; the purchaser may desire to have this particular seller's covenants by reason of his solvency where he would not take the deed from another. Without this stipulation the seller could convey to a dummy and tender the dummy's deed to the purchaser. The seller must also bear all expense of the deed. This is fair, as delivery of the deed is part of the transfer. For his own protection the purchaser should record his deed upon the public records; hence the provision that the deed be "in form to be recorded."

The vital necessity that the contract set forth fully the exact state of the title and encumbrances is apparent from the next provision that the seller shall deliver such a deed "as to convey to the purchaser the fee simple of the premises, free of all incumbrances except as herein stated." By this clause the seller absolutely covenants to give a full, free title except for such encumbrances as are stated. The exception following, referring to the zoning restrictions, applies only to New York City and so much property therein being affected, this clause now usually appears in the printed part of the form.

**Existing mortgage.**—The paragraph referring to the existing mortgage, if any, relieves the purchaser of doubt or speculation as to its terms, which may have been modified, and obligates the seller to procure and deliver at his expense, as he properly should, recordable proof of the amount and interest rate of such mortgage.

**Violations of municipal ordinances.**—Under the police power various municipal departments are empowered to prescribe rules and regulations for the character, conduct and condition of buildings. These rules are enforced in event of disregard by filing notice of violation against the property and

later by fine or judgment. The notice of violation of itself is not in law an encumbrance or lien on the property, though complying with the violation is expensive and failure to remedy the defect may result in serious trouble. The violation not being a lien the seller, but for this clause in the contract, could saddle the purchaser with immediate, possibly large expenses. Hence the purchaser's insistence on this agreement.

**Personal property.**—Many articles used in a building are practically part of it, yet legally the question of whether or not they were included in the sale, if not specifically mentioned, might give rise to dispute, such as shades, curtains, janitors' tools, runners, etc. A great deal of trouble also has been occasioned by reason of the owner turning over to the purchaser without any explanation articles to which he has no title, having not yet paid for them, as gas stoves, ice boxes, etc. To prevent quibbling and to compel the seller to state positively his ownership, the contract reads, "All personal property appurtenant to or used in the operation of said premises is represented to be owned by the seller and is included in this sale."

**Deposit money a lien.**—By law the deposit paid by the purchaser is a lien upon the property, but so that there may be no doubt it is customary to expressly stipulate that not only the deposit but the reasonable expense of examination of title, shall be liens upon the property. And it is only fair for the seller's protection that the contract further provide that they shall not continue liens after default by the purchaser.

**Loss in case of fire.**—Equitably, the premises belong to the purchaser from the time the contract is made. The purchaser however is not in possession and presumably expects to receive the property in substantially the same condition as when he signed the contract. Should there be a fire loss it might be questionable who should bear the loss. To avoid this, the contract expressly states "The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the seller."

**Binding on heirs and executors.**—The parties having made a contract and both desiring that it be consummated, agree, for the purpose of preventing anything arising to prevent its completion that "The stipulations herein are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties." So if the seller die his heirs or executors taking title must carry out the contract in his

stead and convey. In like manner if the purchaser die his executors, or administrators shall pay as provided in the contract. Any person taking title from the seller, knowing of the contract may be compelled to convey. If the purchaser assign his contract however, he is met with another proposition. He is endeavoring to assign an obligation. Should his assignee not carry out the contract, the seller may fall back on the purchaser and compel his performance of its terms. The purchaser's only protection when he assigns his contract is to take an express promise of performance from his assignee.

**Execution of the contract.**—The law requires the contract to be signed by the party to be bound. The duplicate copies are customarily each signed by both parties. Signing may be by subscribing one's name or if unable to write, by marking. Any mark made with intention that it constitute signing is sufficient. Mere signing makes a valid contract. The seal, acknowledgment, and witnesses are not necessary.

It is advantageous to seal the instrument. It raises a presumption that the person who has affixed his seal received a consideration. It places the burden upon him of disproving it, should he desire to defeat the contract. Another advantage of sealing the contract is that when sealed, the obligations of the parties are kept alive by law for a greater length of time, the statute of limitations on sealed instruments being much longer than on instruments not under seal. The seal, however, has not the advantage of restricting the obligation to the one signing the contract. An undisclosed principal may, notwithstanding the seal, be held.

Witnessing the instrument accomplishes little. It is convenient as a memorandum of the fact that the witness was present and saw the parties sign.

No instrument can be recorded unless acknowledged or proven. While contracts are not usually recorded, nevertheless in exceptional cases, if fraud is suspected great harm may be avoided if the contract be placed on record and public notice of its terms so given. For this reason it is very often wise to have the contract acknowledged. This is done by the parties acknowledging their execution of the instrument, before an officer to whom they are known to be the persons executing the instrument and who is empowered by law to take acknowledgments. The officer then signs a certificate of acknowledgment upon the instrument. If the parties either cannot or will not

acknowledge the instrument, the fact may be proven by the witness, who swears before the proper officer that he was present and saw the parties sign the instrument, that he knew them to be the persons described in the paper. The officer then signs a certificate of these facts on the instrument, and it can be recorded. (Appendix forms 15 to 28.)

**Non-performance of contracts.**—Usually contracts of sale are fully carried out but the occasional breach renders necessary some understanding of the rights and liabilities which in that event may be invoked. The default may be, obviously, by either party.

If the seller fail to carry out the contract, his failure may arise from either of two causes, unwillingness or inability, each of which gives the purchaser different remedies. The seller may be able to fulfill the contract but unreasonably refuse to do so. In such case the purchaser may pursue any of three courses. First, he may recover the amount of his deposit with interest and the reasonable expense he has incurred in examination of the title. Second, he may, if the seller still has title to the property, bring an action to compel the seller to specifically perform the contract. If he is successful in his action, the seller must carry out the terms of the contract or he may be jailed until he does so. Third, the purchaser may, if he wish, or if the seller has disposed of the property, sue for the loss of his bargain, in which case he may recover as his damages the difference between the value of the property and what he agreed by his contract to pay for it. Should the value be less than the price, of course this remedy is ineffectual.

The seller may however be quite willing to carry out the contract but be compelled to default by his inability to give the title he has promised. His title may not be clear, there may be other people who have some interest. In such case, if the seller acted in good faith, knowing nothing of the defect, the purchaser may recover only the amount of his deposit and interest and title examination expenses. But if the seller, knowing of the flaw in his title, permitted the purchaser to act to his detriment in entering into the contract, then the purchaser may recover for the loss of his bargain; the difference between the value of the property and the selling price.

The purchaser in signing the contract, having only himself to consider and not having to deliver title to property, which may, without his knowledge have some defect, does not receive

as much consideration as the seller. He should not undertake the obligation of the contract unless he sees his way clear to perform his part. Should he default, his seller may either (A) forfeit the deposit and cancel the contract, (B) bring an action against the purchaser for specific performance, or (C) sue for his damages—the difference between the value of the property and the price the purchaser agreed to pay, this relief being appropriate naturally only if the price exceeds the property's value.

**Contracts for exchange of real estate.**—In the contract just discussed the purchaser agreed to pay cash for the property. Hence its name—contract of sale. Occasionally the purchaser does not wish to pay cash, but has some real estate of his own of which he wishes to dispose and which the seller is willing to take in part or full payment. In this event the contract for exchange is used.

**Form of contract for exchange.**—The following is a usual form of this contract, and contains the customary clauses, though, as said with reference to the contract of sale, any form may be used which contains the necessary elements of a contract.

AGREEMENT, made and dated

between

hereinafter described as party of the first part, and

hereinafter described as party of the second part, for the exchange of real property;

*Witnesseth* as follows:

The party of the first part, in consideration of one dollar, the receipt of which is hereby acknowledged, and of the conveyance by the party of the second part hereinafter agreed to be made, hereby agrees to sell, grant and convey to the party of the second part, at a valuation, for the purpose of this contract, of

Dollars,

All that land with the buildings and improvements thereon in the

The premises which are to be conveyed by the party of the first part shall be conveyed subject to the following encumbrances:

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The party of the second part, in consideration of one dollar, the receipt of which is hereby acknowledged, and of the conveyance by the party of the first part hereinbefore agreed to be made, hereby agrees to sell, grant and convey to the party of the first part, at a valuation for the purpose of this contract, of

Dollars,

ALL that land with the buildings and improvements thereon in the

The premises which are to be conveyed by the party of the second part shall be conveyed subject to the following encumbrances:

The difference between the values of the respective premises, over and above encumbrances, for the purpose of this contract, shall be deemed to be

Dollars, and that sum shall be due and payable as follows, by the party of the

The deeds shall be delivered and exchanged at the office of

at o'clock on 191

It is agreed by the respective parties hereto that

brought about this exchange and that the brokerage shall be paid as follows:

Rents and interest on mortgages and insurance premiums, if any, are to be apportioned, and the risk of loss or damage to the premises by fire, until the delivery of the deeds, is to be borne, by the respective sellers.

If there be water meters on the premises, the respective sellers shall furnish readings to dates not more than thirty days prior to the time herein set for closing title and the unfixed meter charges for the intervening time shall be apportioned on the basis of such last readings.

If there be a mortgage on the premises and such mortgage has been reduced by payments on account of the principal thereof, then the seller agrees to deliver to the purchaser at the time of delivery of the deed a proper certificate executed and acknowledged by the holder of such mortgage and in form for recording, certifying as to the amount of the unpaid principal sum of such mortgage and rate of interest thereon, and the seller shall pay the fees for recording such certificate.

All personal property appurtenant to or used in the operation of said premises is represented to be owned by the respective sellers and is included in this exchange.

All notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by the Tenement House or Building Depart-

ment or Health Department against or affecting either of the premises above described at the date hereof, shall be complied with by the respective sellers thereof, and the premises shall be conveyed free of the same. The sellers shall furnish the purchasers with an authorization to make the necessary searches therefor.

This contract covers all right, title and interest of the respective sellers, of, in and to any lands lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the premises to be conveyed, to the centre line thereof, or all right, title, and interest of the respective sellers in and to any awards made or to be made in lieu thereof, and the sellers will execute and deliver to the purchasers, on closing of title or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of such awards.

Each of the parties agrees to convey the property hereinbefore described as sold by such party respectively, free from all encumbrances, except as above specified, and to execute, acknowledge and deliver to the other party, or to the assigns of the other party, a deed in proper statutory short form for record containing the usual full covenants and warranty, so as to convey to the grantee the fee simple of said premises free from all encumbrances except as herein stated, and except restrictions imposed by City of New York under resolution of the Board of Estimate and Appointment, adopted July 25, 1916, and acts amendatory and supplemental thereto. The deed, in each case, shall be drawn at the cost of the party of the first part thereto.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

*Witness* the signatures and seals of the above parties.

In Presence of

(L. S.)

(L. S.)

(L. S.)

(L. S.)

**Divisions of the contract.**—An analysis of this form shows that it is similar in many respects to the contract of sale, except that the price is paid wholly or partly in property instead of cash. The instrument is dated and contains the names of the parties just as the contract of sale, except that for convenience they are termed “party of the first part” and “party of the second part.” Usually the person who pays no cash whatever is designated as the first party.

Since the properties are being exchanged and no cash or only a small amount passing, the parties may set any value they wish upon the properties to be exchanged. They may agree on any values just so they do not affect the cash difference to be paid. They might recite a nominal value for each property. Usually the values agreed upon are inflated. Following the names of the parties, are set forth the agreed value of the first party's realty, its description and the encumbrances subject to which it is sold. Then follows a similar statement with reference to the second party's property. As in the contract of

sale the description and enumeration of encumbrances should be full and accurate.

**Financial statement.**—Here is set down the amount of difference in value agreed upon, and which party shall pay it and how. For example: The first party owns X which it is agreed is worth \$25,000, and which he is to convey subject to a \$15,000 mortgage. The second party owns Y agreed to be worth \$20,000 which he will convey subject to a \$14,000 mortgage. In this case the first party's equity or value over the encumbrance is \$10,000 while that of the second party is \$6,000 the difference being \$4,000 which the second party will pay. A part of the difference may be paid on the signing of the contract, but quite often no payment is made till the closing of title.

Following the closing clause, which is like a contract of sale, is the brokerage statement. Since this is an exchange, there may very likely be a broker representing each party. The contract should contain the name of each broker, the amount of commission to be paid him, and by whom to be paid. Since the values stated may be and often are inflated and the commission is usually a certain percentage of the actual value, it is always wise to agree on a definite amount of commission, so that no subsequent claim of a percentage amount based on the value stated in the contract be made by the broker.

The remaining provisions are similar to the contract of sale but being worded to apply to each party as each is conveying realty.



## CHAPTER VI

### AUCTION SALES

**Definition and kinds of auction sales.**—An auction sale is a public sale to any person bidding the highest price, upon terms and conditions previously announced. The sale described in the previous chapter was negotiated privately, a definite purchaser appearing with whom the seller dealt directly, knowing with whom he was doing business. An auction sale on the other hand is public and any person may become the purchaser. The owner does not even know, until the bidding takes place, what price he will receive for his property.

Usually the seller can realize more for his property at private sale. However he may be compelled to sell at auction, either because the law requires the sale of his property publicly, or because private purchasers do not appear or he thinks a public sale would bring a larger price. In the large cities there are customary auction rooms and licensed auctioneers whose time and energy is devoted to auction sales. In the country districts the sale is usually had at some gathering place, as the post office, railway station, town hall or on the property.

Auction sales are of two kinds—*voluntary and involuntary*, each differing very materially from the other.

**Involuntary auction sales.**—The involuntary auction sale is brought about as the result of the enforcement of some lien upon the property. A lien, it will be recalled, entitles the holder in the event of non-payment to satisfy it from the property. The lien may have originated in a voluntary act of the owner, e.g. borrowing on mortgage, but the lien once coming into being its enforcement may be secured entirely without the owner's volition. The owner having defaulted in payment, the law gives the lienor the right to have the property sold. From the proceeds of the sale, the amount of the lien and interest and all expenses are paid, and the balance belongs to the owner. A public auction sale, in theory of law, will bring the greatest price, hence all sales to enforce liens must be of that kind. The sale follows a legal action in which the lienor's right has been established.

**The sale.**—If the lien is a judgment the sale is usually conducted by the sheriff. The other liens usually are satisfied by a sale conducted by a referee who is appointed by and responsible to the court. Notice of the sale must be given strictly in accordance with law. Failure to comply with each requirement may result in a sale which may be set aside. The notice is given usually by advertising in the newspapers and in the rural districts by posting a copy of the notice of sale in several prominent places. The sheriff or referee may conduct the sale himself, but usually in the cities it is customary for him to engage an auctioneer. The following is an example of notice of sale following foreclosure of a mortgage upon property in New York City.

**SUPREME COURT, COUNTY OF NEW YORK.** John Jones, plaintiff, against William Smith et al., defendants.

In pursuance of a judgment of foreclosure and sale, duly made and entered in the above entitled action, and bearing date the 4th day of April, 1921, I the undersigned, the referee in said judgment named, will sell at public auction, at the Exchange Salesroom, No. 14-16 Vesey Street, in the Borough of Manhattan, City of New York, on the 28th day of April, 1921, at 12 o'clock noon on that day, by Henry Brady, auctioneer, the premises directed by said judgment to be sold, and therein described as follows:

All that lot of land in the Borough of Manhattan, City of New York, with the building thereon erected, bounded and described on the map above mentioned, as follows:

Beginning at a point on the southerly side of One Hundred and Fourteenth Street distant one hundred and seventy-five feet westerly from the southwesterly corner of One Hundred and Fourteenth Street and First Avenue; and running thence southerly, and parallel with First Avenue, one hundred feet ten inches; thence westerly, and parallel with One Hundred and Fourteenth Street, twenty-five feet; thence northerly, and parallel with First Avenue, one hundred feet ten inches to the southerly side of One Hundred and Fourteenth Street; and thence easterly, along the southerly side of One Hundred and Fourteenth Street, twenty-five feet to the point or place of beginning.

Dated New York, April 5, 1921.

FRANCIS G. KEOGH,  
Referee.

BROWN & WHITE,  
Attorneys for Plaintiff,  
Office and P. O. address, 32 Liberty Street,  
Borough of Manhattan, City of New York.

In some places it required that the notice of sale contain a statement of the approximate amount of the lien to satisfy which the property is being sold.

**Terms of sale.**—In any sale of real property, there must

be a written contract. In a private sale the contract is prepared and signed by the parties after their negotiations have led to an agreement. Upon a sale at auction there is obviously no negotiation, the auctioneer offering the property, asking bids, and selling to the highest bidder. So that the prospective bidders may know upon what they are bidding, terms of sale are prepared and read by the auctioneer before the property is offered. These terms of sale, usually prepared in duplicate constitute the contract. The following is the usual form, with the blanks filled in.

..... COURT, ..... COUNTY

..... } *Terms of Sale.*

The premises described in the annexed advertisement of sale, will be sold under the direction of.....Referee, upon the following terms:  
Dated,.....191

- 1st.—Ten per cent of the purchase money of said premises will be required to be paid to the said Referee, at the time and place of sale, and for which the referee's receipt will be given.
- 2nd.—The residue of said purchase money will be required to be paid to the said Referee at his office, No.....in the Borough of..... City of New York, on or before the.....day of.....191... at.....o'clock M., when the said Referee's deed will be ready for delivery.
- 3rd.—The Referee is not required to send any notice to the purchaser; and, if he neglects to call at the time and place above specified to receive his deed, he will be charged with interest thereafter on the whole amount of his purchase, unless the referee shall deem it proper to extend the time for the completion of said purchase.
- 4th.—All taxes, assessments and water rates duly confirmed and payable which, at this date, are liens or encumbrances upon said premises, will be allowed by the Referee out of the purchase money, provided the purchaser shall, previous to the delivery of the deed, produce to the Referee proof of such liens, and duplicate receipts for the payment thereof.
- 5th.—The purchaser of said premises or any portion thereof, will, at the time and place of sale sign a memorandum of his purchase and an agreement to comply with the terms and conditions of sale herein contained, and pay, in addition to the purchase money, the auctioneer's fee of fifteen dollars for each parcel sold and salesroom fee of two dollars for each knockdown.
- 6th.—The biddings will be kept open after the property is struck down; and in case any purchaser shall fail to comply with any of the above conditions of sale, the premises so struck down to him will be again put up for sale, under the direction of said Referee, under these same terms of sale, without application to the Court, unless the Plaintiff's Attorney shall elect to make

such application; and such purchaser will be held liable for any deficiency there may be between the sum for which said premises shall be struck down upon the sale and that for which they may be purchased on the re-sale, and also for any costs or expenses occurring on such re-sale.

7th.—.....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....Referee.

#### MEMORANDUM OF SALE

.....have this.....day of.....191... purchased the premises described in the above annexed printed advertisement of sale, for the sum of.....dollars.....and hereby promise and agree to comply with the terms and conditions of the sale of said premises, as above mentioned and set forth.

.....  
 Address.....  
 .....191... Received from.....the sum of  
 .....dollars, being 10 per cent on the amount bid  
 by.....for property sold by me under the order in the cause.  
 \$.....

After the bids have been closed the successful bidder signs the memorandum on one copy which is kept by the officer selling, who in turn receives the deposit and after signing the receipt gives one copy to the purchaser. Each party then has the signed obligation of the other, and the subsequent course of the transaction is, in the main, similar to a private sale, except as the provisions in the terms of sale differ from the usual contract on a private sale.

**Description of terms of sale.**—Following the title of the action is the recital that the property described in the advertised notice (a copy of which should be attached to the terms of sale) is being sold by the referee, naming him, upon certain terms which are then set forth. The first clause provides for payment of a deposit by the purchaser, usually not more than ten per cent. The second sets the date, usually thirty days after, and the place of closing title, which is often the office of the attorney for the lienor. The time allowed enables the purchaser to examine the title. The third and sixth clauses

prescribe the penalty in the event of default by the purchaser in taking title; the property may be resold, and he will be held for the expense of such resale and any difference between his bid and the amount bid on resale. The fourth clause provides for disposition of taxes, assessments and water rates. This differs from a contract of private sale in which it is provided that the seller pays all such as are due up to the date of closing title. Here the referee is only responsible for those which accrue up to the date of sale. He agrees either to pay them himself, or allow them if the purchaser pay them and produce receipts. By the fifth clause the purchaser agrees to sign and be bound by the terms of sale and to pay the auctioneer's fee. This expense is always borne by the purchaser.

If the property is being sold subject to any existing encumbrances they must be fully set forth in the seventh clause. If not, the purchaser may properly refuse to complete the sale. For example, if a second mortgage were being foreclosed, and the first mortgage were not recited as a lien subject to which the property was being sold, the purchaser would be entirely justified in claiming that he had intended his bid to be on a free and clear property.

**Fraudulent bidding.**—The law prohibits any act by which the bidding upon property sold at involuntary auction is artificially limited or controlled. The property being sold is that of an unfortunate debtor. As much as possible must be realized from it, so that not only may the lien be paid, but if possible something remain for the owner. Full access and opportunity to bid must be given to all prospective bidders. No bidder is required to bid more for the property than he wishes. But the sale must be conducted in the usual manner, without undue haste, or failure to recognize any bidder.

The lienor at whose instance the property is being sold expects to be paid the amount of his claim out of the proceeds of sale; He therefore is justified in bidding the property (if it is worth it) at least up to an amount sufficient to satisfy his claim. There is nothing improper in this even though he cease bidding when that amount has been reached. Nor is it wrong for junior lienors to bid upon the property in an effort to protect themselves; or for the owner to bid in an effort to have his property bring as much as possible. The mere fact that the successful bidder secured the property very cheaply, would not be evidence of fraud.

**Voluntary auction sales.**—A voluntary auction sale is the free act of the owner. He may be unwilling to keep the property longer, or he may have urgent need of money, and may decide upon an auction sale as a means of disposing of the property and realizing cash. But he is not compelled to sell: he does it voluntarily. No lienor steps in to compel the sale of the property by legal action. Hence a voluntary auction differs in one very material respect from an involuntary sale; there is no sheriff, referee or other officer conducting the sale, though there may be and usually is an arrangement made for an auctioneer.

Fiduciaries, such as executors and trustees who are directed to sell for the best price obtainable, will usually sell at auction. By so doing, they are fully protected from criticism. They may also sell at auction when they believe a higher price will be obtained in that way. In many cases also an individual under no compulsion may sell at auction in the belief that such manner of disposing of his property will realize most for him.

**Protective bidding.**—It may be that at the time of sale the owner is unwilling to have the property sold for less than a certain sum, or if the property is being sold by an executor to raise funds to pay creditors or beneficiaries, they may wish the property to bring sufficient to satisfy their claims. This gives rise to the question of proper protection. It is not improper for such creditors and beneficiaries to have the property bid up to cover them. The owner selling should not bid unless it has been announced by the auctioneer that the property will be protected up to a certain amount. The terms of sale, for the same purpose, may state that no bid of less than a certain amount will be accepted. "Boosting" by fictitious bids, made by agents of the owner, for the purpose of inducing higher bids by others is wrong and may result in the sale being set aside by a court. It hurts the reputation of auction sales, discourages honest bidders and no wise auctioneer will permit it. If he detects it, he should at once withdraw the property from the sale.

**Terms of sale.**—The terms of sale in a voluntary auction sale may contain any provisions which the seller desires. Of course if he makes them too onerous he will get no bids, but there is no court (as in an involuntary auction) to prescribe the terms. The terms of sale in a voluntary auction usually are similar to those in an involuntary auction, except in three

particulars. The deposit is paid to the auctioneer who gives his receipt and who holds it for the parties. When the deed is passed he pays it to the seller upon surrender of the receipt by the purchaser. Another difference is that in a voluntary auction it is usually provided that rents, interest on mortgages and insurance premiums be apportioned and that the seller pay taxes, assessments and water rates due up to the date of closing title. The third distinction is that while in an involuntary auction the terms of sale are signed by the referee, in a voluntary sale, there being no referee, they are signed by the owner, his attorney or the auctioneer.

Successful auction sales.—The object of an auction sale is to realize the greatest price. In involuntary sales often no one is interested except the immediate parties; the lienor is seeking only to have the property bring the amount of his lien; the owner is usually in no position to help himself. Consequently the public is not drawn to the sale and there is little bidding. Voluntary sales seek the public eye. By judicious advertising in the newspapers and wide distribution of posters and booklets well written and illustrated, showing the attractive features of the property, its accessibility, improvements, existing and proposed, schools and amusement facilities, the attention of the public is attracted. The sale may be held on a holiday, in a tent on the property. Transportation and entertainment is often provided. Then the auctioneer having the crowd before him lauds the property and uses all his persuasive power to draw bids. The successful results of such sales are attested by the large tracts of property sold advantageously by this method. The appendix contains numerous specimens of successful advertising.

## CHAPTER VII

### DEEDS

**Purpose of deed.**—A deed is a writing in proper and efficient words conveying absolutely title to or an interest in realty. It is the instrument by which the transfer of title is effected. Every contract of sale or for exchange, and the terms of sale in an auction sale provide for the final consummation of the transaction by delivery of a deed. Anciently ownership of land was transferred symbolically by delivery in the presence of witnesses, by the seller to the purchaser of a clod of earth from the land. For many years and at the present time the transfer is accomplished by delivery of a deed and surrender of possession.

**Form of deed.**—There are various forms of deeds according to their purpose and objects, and differences will be found in those of the several States. However the simple form of deed by which title is passed is substantially the same in all States. In New York it is the form known as the "bargain and sale deed," and its phraseology is prescribed by statute as follows:

THIS INDENTURE, made the                      day of                      nineteen hundred and                      ,  
between                      , part                      of the first part  
and                      , part                      of the second part,

WITNESSETH, that the part                      of the first part, in consideration of                      Dollars, lawful money of the United States,  
paid by the part                      of the second part, do                      hereby grant and release unto the  
part                      of the second part,                      and assigns forever,  
ALL

together with the appurtenances and all the estate and rights of the part                      of  
the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the part                      of  
the second part,                      and assigns forever

AND the said                      covenant that he ha not  
done or suffered anything whereby the said premises have been incumbered in  
any way whatever

IN WITNESS WHEREOF, the part                      of the first part ha                      hereunto set  
hand and seal                      the day and year first above written.

In presence of

(ACKNOWLEDGMENT)



The opening words are "This Indenture." They have no significance now. The instrument would be just as effectual without them. They survive from the ancient days when the documents were written in duplicate on the same sheet, then torn apart, each party keeping a piece (indenture). To prove genuineness they were fitted together to see if the torn edge of one fitted the other.

These words are followed by the date. As in contracts it is not necessary that the deed be dated. It is convenient as a memorandum of the time of signing, however, and in the absence of proof to the contrary is presumed to be the date of delivery of the instrument. For that reason deeds are usually dated.

Next are set forth the names of the seller and the purchaser in that order. Each name should for identification be followed by the address of the party. In New York and some other States it is required that the purchaser's address be designated in detail as to street and number. In the deed under discussion the seller is designated "party of the first part" and purchaser "party of the second part." They are also termed respectively "grantor" and "grantee." If the seller is married he must give a deed free of his wife's dower. She may sign and deliver a separate instrument releasing her dower. It is however customary for her to accomplish the same result by joining as a grantor in the deed. In that case the wording should read "John Jones and Mary Jones, his wife." Her name should always be followed by words indicating her status as wife. "Witnesseth" has no present-day meaning whatever, and could be omitted without affecting the validity of the instrument.

**Consideration.**—The statement of the consideration (that which is given to the seller in return for the deed), comes next. There are several classes of considerations and since each may differently affect the title conveyed, and the rights of the purchaser, an examination of each is helpful. For general purposes considerations are divided into three classes: good, valuable and illegal. Good considerations and valuable considerations give to the purchaser very different rights and must therefore not be confused. A valuable consideration is the giving by the purchaser at the time of delivery of the deed of money or money's worth. It need not be exactly equal to the value of the property but should bear some fair relation to the property's value, and be of some present value. The usual

commercial sale of realty for cash, or in exchange at a fair price, exemplifies a valuable consideration. A good consideration on the other hand is one not measurable in terms of money or money's worth or not passing at the time of the sale. For example: A gives his son B his farm by reason of natural love and affection. This consideration is not measurable in terms of money. Or A, who has been for several years indebted to B in the sum of \$5,000 gives B a deed of his farm upon B cancelling the indebtedness. In this instance the consideration is not a present transfer of value between the parties.

The distinction between these two classes of consideration will be readily understood by bearing in mind the principle, that, equitably, a man is trustee of his property for the benefit of his creditors. If he has no debts, or will be left even after the conveyance, with ample property to pay his debts, he may give away his property or sell it for any price and no one may object. But if he has creditors he is not permitted even unintentionally to cheat them by disposing of his property without substituting in its place something of value received for it. A good consideration is sufficient as between seller and purchaser to support a deed, but is in fraud, possibly unintended, of creditors of the seller and they may be able to set the deed aside. A deed delivered for a valuable consideration, on the contrary, leaving in the seller's hands something of value, is good as against the world. The creditors are in just as good a position as before the conveyance: Simply one form of asset has been substituted for another. Courts are very jealous of the rights of creditors; one of them may not secure an unfair preference over the others. It is for that reason that the deed to the creditor B (above) would be set aside. He should not receive any special advantage. So also if the seller has debts, careful scrutiny should be given any sale where the price is far less than the property's value. A court at the instance of creditors may set aside the deed, if convinced that the debtor has parted with his property for an inadequate consideration.

An illegal consideration may be defined as anything which the law prohibits. It really is a misnomer, since being illegal it is in the eyes of the law not a consideration. If the purchaser, for example, promise in return for the deed that he will conduct a saloon in the premises conveyed, the consideration is illegal and the deed void.

**Expression of consideration.**—Some consideration should

always be stated in a deed. This shifts the burden of proving lack of consideration to anyone attacking the deed. To be sure the seal at the end of the instrument imports consideration and performs the same service, but it might inadvertently be omitted. The amount stated need not be the actual price paid. It may be nominal, as "ten dollars" or "one hundred dollars." This is usually done whenever the parties desire secrecy. There is however one important exception to this rule. When the seller is a fiduciary, the purchaser should always insist either on the deed stating the full, actual consideration or the seller giving a declaration signed and acknowledged, in form which may be recorded, setting forth the actual amount received. This for the reason that the fiduciary is not selling his own property and is bound therefore to sell only for a fair price, and the purchaser might subsequently be called upon to prove that fact.

**Granting clause.**—The words in the form, following the recital of the consideration, "do hereby grant and release unto the party of the second part \* \* \* and assigns forever," constitute what is known as the granting clause. It is by this clause that the interest or title is transferred, and care must be taken to see that this clause is properly worded. If for example the interest to be given by the grantor to the grantee is an estate in fee simple the words "to the party of the second part, his heirs or assigns forever" should be used, and appropriate words for the other estates if one of them is to be conveyed. Any instrument under consideration is always construed against its maker, and the grantor is presumed to intend to grant a fee simple estate unless he expressly limits it either in this clause or the habendum clause. This rule has one exception: as to a grantor who has an individual estate as well as a representative right to sell. As to him it is presumed that he intends to convey all his individual right but only such representative rights as he expressly states.

**Description.**—Any description which unquestionably identifies the property is sufficient for the deed. It is not usual to use street number descriptions, it being desirable to identify the property with more particularity. A description by street number is appropriate in a contract, since the contract is normally consummated within a short time. A deed on the other hand remains a permanent record and becomes a part of the chain of title. Consequently the description used should, if possible, be one that may be identified with reasonable ease many

years later. It is for this reason that street numbers which may change as buildings are altered or demolished, and monuments such as fences, trees and stones which may be removed are inadvisable.

The various forms of descriptions have been fully discussed in the chapter on contracts. There are however certain precautions which should be observed in drawing the description for a deed. The form of descriptions should never, except upon expert advice, be changed. Much trouble has resulted from failure to observe this rule. The seller should always use the same description as that in the deed by which he took title. If for any reason a change in the form of description is made, it is best to follow the description with a statement that the premises described are the same as those conveyed to the seller by his grantor, naming him, by a certain deed, reciting its date and the date and place of record. In fact, since errors sometimes occur, this statement is not out of place in any deed, and being used, corrects any error in the description, by reference to the former deed.

As said before any description is good which unquestionably identifies the property. If, however, the description is so indefinite that it is impossible to definitely fix the property intended to be conveyed, the deed is void for uncertainty: As for example a deed conveying "any one of ten lots." It cannot be told what lot is intended to be conveyed. No amount of explanation would point to any one particular lot as the one intended.

An ambiguity in the description will not of necessity make the deed void. Ambiguities may be patent or latent. If patent, that is, if the ambiguity appears upon the face of the instrument, resort may be had to evidence outside the instrument to discover what was the intent of the parties. For instance the description may be of "the most easterly two of my lots on the south side of X street." This description as it reads is very ambiguous, yet it is easily ascertainable by an examination of the public records just where the grantor's lots are and which are the most easterly two. The patent ambiguity may be caused by an inconsistency in the elements of the description. Such would be a description by metes and bounds of a house on X street followed by a recital that it is the property known as 125 Y street. Here is a clear inconsistency yet the ambiguity appears on the face of the deed and the deed is good, if ex-

planatory evidence, indicating the property intended, can be procured. As to latent ambiguities the rule is quite different. These are such as do not appear upon the face of the instrument; the description being apparently definite and clear. The parties may have intended to transfer X, but by error a description of Y was put in the deed. The deed on its face shows no ambiguity whatever. Such a deed may be reformed by an action brought to correct it or the grantee may compel the grantor to give a correct deed. However it must be borne in mind that those who come after are entitled to rely upon instruments which have been recorded. If the deed is ambiguous on its face, anyone examining the records becomes aware of it, and can guard against it. But if the deed appears clear the public is entitled to rely on it, even though it may be quite contrary to the intentions of the parties to it. Consequently if anyone has acted in reliance upon such a deed, and would be put to a loss by the parties changing or explaining it, the deed must stand without change or explanation of any kind.

**Appurtenances.**—Following the description is a recital “With the appurtenances and all the estate and rights of the party of the first part in and to said premises.” By appurtenances is meant all those rights which go with the land although not within the area described. The easement to keep a wall standing on the next lot; a right of way to the highway; spring and drainage rights, are examples of appurtenances. The right to the appurtenances go with the property by law so that there is really no need of this clause in the deed.

**Habendum.**—The next clause, the habendum, commencing “To have and to hold,” etc., describes the estate granted to the grantee. It should be consistent with the granting clause. Any variation in the statement of the estate granted in this and the granting clause is dangerous. This clause may define or explain the estate granted but cannot cut it down. If the estate to be conveyed be less than a fee simple it must be here stated and clearly described. For example: If a life estate, appropriate words should be used as “To have and to hold the above granted premises unto the said party of the second part for and during the term of his natural life.”

It is usual if the property is being sold subject to encumbrances to set them forth following this clause. This applies usually to mortgages, rights of tenants and restrictions. The grantor is assumed to be conveying free and clear of all en-

cumbrances except those specifically mentioned. Hence a careful enumeration should be made of each encumbrance preceded by the words "subject to" as, for example, "subject to a mortgage now a lien on said premises to secure the payment of \$10,000;—to the rights of present tenants as monthly tenants and to all covenants and restrictions of record."

Often, particularly when an owner of a large plot is selling vacant lots for building purposes, he wants to restrict them for the benefit of the entire plot. He may believe that the property will be more valuable if houses of only certain types are erected. This purpose is usually accomplished by means of "restrictive covenants" which are inserted in the deed at this place. Examples of such covenants will be found in the appendix.

**Testimony clause.**—In the deed now under discussion, the "bargain and sale" form, the final provision beginning with the words "In witness whereof," etc., is the testimony clause. This paragraph is a purely formal recitation of the fact that the grantor has signed and sealed the deed. It might be just as well left out so long as the signing is actually done.

**Signature.**—The deed must be signed by the party transferring the title. If he be married his wife being also a grantor, must if she has not otherwise released her dower, sign also. They do this, as in executing the contract, usually by affixing their signatures, or marks if they cannot write their names. If a mark is used, it is customary for it to be a cross and for someone present to write the grantor's name as an identification around the cross, thus:

his  
John (x) Brown  
mark

A corporation not having hands or any physical person must act through designated agencies,—its officers. They have such powers as are given them by the governing body of the corporation—its board of directors or trustees if a business corporation. The different municipal corporations, including cities, villages, towns, and school districts, have governing boards under various names each of which authorizes execution by some proper official. A corporation executes an instrument by affixing its seal. The form of this corporate seal is usually definitely fixed, the corporation always using the same form. Business corporations generally adopt a form consisting of two concentric circles having the corporate name between

them and the name of the State in which incorporated and occasionally the year of organization.

It is customary for the officer directed to execute the instrument, to sign the name of the corporation and his own name adding the title of his office. Often another officer will sign in attestation. But the important thing is the corporate seal, which is affixed by the authorized officer, either by impressing the seal upon the instrument itself or upon a wafer which is then pasted on the instrument.

**Seal.**—In many States it is necessary for an individual grantor to seal his deed. This may be done by pasting a wafer of paper after the signature or by indicating the place of seal by means of a sign or otherwise. A seal is not necessary in New York; the deed is valid without it. However most deeds in New York are sealed for the reason that if under seal the grantee's right of action for breach of any covenant lasts longer.

**Witness.**—No witness is necessary. Usually however some one present at the time signs his name as such. A witness is convenient only as evidence of the signing, or to prove the execution in event the signor fails to acknowledge his execution of the deed.

**Acknowledgment.**—In some States a deed cannot be recorded unless the signor acknowledges his signature or the signature is proven by a witness. The manner of acknowledgment by an individual is explained fully in the chapter on contracts (page 59). A corporation cannot, of course, acknowledge its signature. Yet the seal must be proven. This is done by the officer who affixed the seal. He is sworn by an officer authorized to take acknowledgments, and on oath states his residence, his official title in the corporation, that he affixed the seal, that the seal affixed is the corporate seal and that he acted by order of the governing board of the corporation. The officer taking the acknowledgment then certifies these facts on the deed and signs it stating his title. (Appendix form 16).

**Quit claim deed.**—The Bargain and Sale deed, which has been discussed, transfers full title to the property. It is used for the purpose of consummating a sale, particularly where the grantor is unwilling to make any covenants as to possession and title in the future. Often a person does not own the property but merely some small interest or claim, real or fancied. Should it be desired to transfer this, the quit claim deed is used. It is

similar in wording to the bargain and sale deed except that the granting clause uses the words "remise, release and quit-claim" instead of "grant and release." Under this form of deed the grantor is not held to be undertaking to give any title, he merely surrenders whatever claim he may have.

**Bargain and sale deed with covenants.**—Of course every purchaser of property should, and usually does make an examination of the records to ascertain whether the seller's title is good. The records may show a good title in the seller, yet there may be many flaws which the records do not indicate. A deed from A, B and C, in the prior chain of title may state that they are the only children of a former owner; there may be other children who have a right. There are many other possible defects in the title undiscoverable from an examination of the records, but which may come to light after the purchaser has taken title. To guard against loss in such contingency, it is customary to stipulate in the contract of sale that the grantor give a deed containing certain covenants and warranties respecting the property.

**Covenant against grantor's acts.**—Grantors who are fiduciaries, such as executors and trustees, have no interest in the property or the proceeds of its sale except as representatives of others. They do not wish to assume any future obligations. Hence they customarily are willing to covenant only that they "have not done or suffered anything whereby the said premises have been incumbered in any way whatever." This is known as the covenant against grantor's acts and as it states, is merely a declaration that the grantor has himself done nothing to harm the title. This covenant, if broken by the grantor, is considered to be broken at the time of delivery of the deed, not at any later time, or as is said, it does not run with the land. No subsequent purchaser of the land benefits by it, except in so far as the time to sue for its breach is usually 20 years and the subsequent purchaser may become entitled to sue on the covenant by reason of assignment in later deeds. His only right is however by reason of the cause of action for breach being assigned to him; he has no rights under the covenant itself.

**Full covenant and warranty deed.**—The usual form of contract of sale where the seller is acting for himself provides that the seller shall give a deed containing the full covenants and warranties. These give the purchaser every possible future guarantee. In New York State they are five in number. They



are inserted in the deed between the habendum and testimony clauses and in order are known as the covenants of

1. Seizin.
2. Quiet enjoyment.
3. Encumbrance.
4. Further assurance.
5. Warranty.

The purpose of these covenants is to create a continuing future obligation upon the grantor. As to all or any of them the purchaser may know of a breach at the time he takes title, yet his rights are not affected. It will be noted that the covenants naturally divide into two classes: the first and third covenants relate to the past; the second, fourth and fifth to the future. Those which relate to the past do not run with the land; the others do.

**Seizin.**—"That the said (grantor) is seized of the said premises and has good right to convey the same." Under this covenant the grantor guarantees that he owns and is in possession of the property and that he has good right to sell it. This covenant relates to the time of the transfer and naturally if broken at all, is broken at the time of delivery of the deed. Any right of action under it commences to run from that time. The purchaser may recover from the seller, in case of breach of this covenant, whatever his expense may be up to the amount he paid for the property.

**Encumbrance.**—"That the said premises are free from encumbrances." Since this covenant guarantees against encumbrances, it is most important that any encumbrance, subject to which the property is sold, be stated in the deed. This may be done at any place, usually after the description, habendum clause or following this covenant. If this covenant be broken the purchaser may recover from the seller his expense in paying off any encumbrance which may have been a lien when he bought the property. Like seizin this covenant limits any recovery to the price paid and is broken if at all at the time of delivery of the deed.

Each of the remaining three covenants bind the seller to future obligations. No right of action may be in existence at the time of the sale, so the covenant itself and not the cause of action, runs with the land.

**Quiet enjoyment.**—"That the party of the second part shall quietly enjoy the said premises." By this covenant the seller

guarantees that the purchaser shall not be disturbed in his possession of the property. It relates to possession and not to the title. To make the seller liable for a breach, it is necessary to show that the purchaser has actually been dispossessed. Mere threats and claims of outsiders of some rights in the property do not constitute a breach of this covenant.

**Further assurance.**—"That the party of the first part will execute or procure any further necessary assurance of the title to said premises." The seller undertakes to procure and deliver any instrument other than the deed which subsequent events show to be requisite to make good the title.

**Warranty.**—"That said (grantor) will forever warrant the title to said premises." This covenant is an absolute guarantee by the seller to the purchaser of title and possession of the premises. It is the most important of the covenants. If broken, the purchaser may recover his damages up to the value of the property at the time of sale.

**Effect of covenants.**—The five covenants discussed do not by any means guarantee a marketable title to the purchaser. The purchaser may have much actual trouble with his title and possession, yet no covenant be broken. There may, as said, be some person or persons making claims to rights in the property. If however the purchaser is not actually put out of possession he has, in New York and many other States, no redress; neither the covenant of warranty nor that against encumbrances has been broken. There are many technical defects which may exist in a claim of title or possession not sufficient to permit of ousting the purchaser, nor of constituting a breach of any covenant, but which nevertheless are a cloud on the title. Under such circumstances the purchaser has what is known as a "good" title; no one can take away his possession; but he has not a "marketable" title; he could not compel a purchaser to take it.

## CHAPTER VIII

### BONDS AND MORTGAGES

**Purpose of bonds and mortgages.**—When real property is transferred absolutely, the transaction is effected by delivery of a deed. Since very early times it has been customary for owners of realty to borrow money, pledging their property for its repayment. A loan upon a promissory note may be good when made, yet the borrower may become bankrupt and the note when due have no value. Even a loan secured by a pledge of personal property is uncertain for it, unlike realty, has no permanent place; it may be moved away, disappear or be concealed. Loans upon security of land, being so much better secured, have always been in favor and a large part of the realty, particularly in cities, is covered by mortgages as security for loans. The amount loaned should, of course, bear a fair relation to the value of the property. but since this question is more fully discussed in a later chapter, it is not dwelt upon here.

The bond and mortgage are the two instruments by which a loan on realty is secured. The bond is the evidence of indebtedness and the promise to repay; the mortgage a pledge of specific realty as security.

**Form of bond.**—In several States a note is given by the borrower as evidence of the debt; in some even the interest amounts are represented by a series of notes given when the loan is made and maturing on the interest dates. Most States, however, use a bond substantially similar in form to that of New York. In New York two forms of bond are found, but that used by the title companies is more desirable. Its form follows:

KNOW ALL MEN BY THESE PRESENTS,

That

hereinafter designated as the obligor, do hereby acknowledge to be indebted to

hereinafter designated as the obligee, in the sum of

dollars, lawful money of the United States, which sum said obligor do hereby covenant to pay to said obligee, or assigns, on the day of nineteen hundred and , with interest thereon, to be computed from the day of , 19 , at the rate of per centum per annum, and to be paid on the day of next ensuing the date hereof, and semi-annually thereafter.

AND IT IS HEREBY EXPRESSLY AGREED THAT the whole of the said principal sum shall become due at the option of said obligee after default in the payment of interest for thirty days, or after default in the payment of any tax or assessment for thirty days after notice and demand. All of the covenants and agreements made by the said obligor in the mortgage covering premises therein described and collateral hereto, are hereby made part of this instrument.

Signed and sealed this                      day of                      , 19

IN THE PRESENCE OF

An examination of the form reveals that the bond consists of three divisions: 1. An acknowledgment of indebtedness, 2. A promise to pay, and 3. Provisions for default. The opening words, "Know all men by these presents," have no meaning. They are surplussage and the bond would be just as valid without them. They are merely a survival of ancient usage.

**Acknowledgment of indebtedness.**—Next appears the acknowledgment of indebtedness. The borrower's name is inserted. It is not necessary to add after his name his place of residence. That is often done however for identification. The borrower is designated as the obligor; he gives his obligation. He acknowledges himself indebted to the lender, known as the obligee; the person who receives the obligation. Often there are several borrowers. Bearing in mind that the lender wants the fullest security, it is customary in such event to insert the words "jointly and severally" following the names of the borrowers. By such an obligation the lender may collect from any one or all of the borrowers. Each of them makes himself liable to pay the entire indebtedness. Of course they may have any arrangement they wish between themselves for contribution, but no burden is placed on the lender to collect proportionately from them.

Following the designation of the obligee is stated the amount of the indebtedness; ".....dollars, lawful money of the United States." That is the usual form, and calls for any sort of legal tender of the United States; gold, United States notes, silver dollars and fractional currency in limited amounts. Bank notes, silver and gold certificates and certificates of deposit are not legal tender. In many countries the national paper money is worth less than its face value. While this is not so in the United States, nevertheless many foreign lenders desire that the borrower obligate himself to pay "in gold coin of the United States of the present weight and fineness." A bond containing such a form of obligation is known as a gold bond. Upon payment of such a bond the

lender may accept payment in paper money, but should it be depreciated, he need not take it; he may insist on payment in gold.

**Promise to pay.**—The preceding language has been entirely a recital of indebtedness. Now the obligor states the terms of his promise to pay: "Which sum said obligor does hereby .....covenant to pay." If more than one borrower, "jointly and severally" should be inserted in the blank space. The promise is made to the obligee, and since the bond is personal property, to the executors, administrators or assigns of the obligee, if an individual; or its successor and assigns if a corporation. Next is set forth the date on which the principal shall be payable, "on the.....day of..... nineteen hundred twenty....." by filling in the blank spaces. Under these terms the borrower cannot pay the bond until the due date. If the lender is willing to give the borrower the option to pay sooner, this provision may be made to read "on or before the.....day." etc. Usually however the lender is unwilling to give such an option; he wants to know that his money is invested for the full period and that he will not suddenly have his money returned, compelling him to seek another investment. For this reason, even if the lender is willing to grant the option, it is customary to provide in the bond, either that notice of such intention be given a certain length of time in advance of the payment, or that the borrower when making the payment shall pay additional interest for a certain period of time. In this way the lender has opportunity in the first case to seek a new investment and be ready to place his money as soon as he receives it, or in the second case, he receives interest to cover the time the money may be idle in his hands until another investment is found.

Following the due date appears the interest clause: "with interest thereon, to be computed from the.....day of .....192.., at the rate of ..... per centum per annum, and to be paid on the .....day of .....next ensuing the date hereof, and semi-annually thereafter." The appropriate dates should be inserted in the blank spaces. The date of the bond is the date from which interest is usually computed. The interest is not paid in advance; no interest is paid when the loan is made. Interest may be payable at any agreed interval, monthly, quarterly, semi-annually or annually. Most often it is made payable

semi-annually, and usually accords with the date of the bond: for example, if the bond be dated February 12th, 1921, the interest would become payable August 12th next ensuing, etc. This is not a fixed rule. Many investors, particularly banks, desire interest payments to come in on certain dates and to that end will have their bonds provide that the first interest payment be due on the first of their interest dates following the making of the loan, and semi-annually thereafter. The rate of interest is agreed upon between the borrower and lender and inserted in this clause.

While a definite date is fixed for repayment of the amount loaned, very few mortgage loans are paid when due. Unless the property has depreciated in value the loan is usually allowed to remain. Banks, particularly, generally permit their loans to run on indefinitely, notifying the owner from time to time of any change they may wish to make in the interest rate. Often the date of payment is extended by a formal instrument, known as an "extension agreement," which designates a new date of payment in the future and may make any agreed changes in the interest rate or other terms of the bond.

Many bond forms leave the entire interest clause blank. When using such a form care must be taken to incorporate all the requisites: due date of principal, date from which interest runs, its rate, and dates of payment. Care should be had also not to use a form of interest clause providing for payment of interest at a specified rate "until the full amount of principal and interest is paid." Such a clause prevents the lender from increasing the interest rate, even after the due date, except by express agreement. The form of bond set out heretofore permits the lender to raise the interest rate to the legal maximum, as a penalty, as soon as the date of payment of principal passes.

**Repayment in instalments.**—Bonds such as have been discussed, by their terms make the principal payable in its entirety at a specified time. It may be agreed that the principal shall be payable in instalment at designated intervals. The following is a satisfactory form of clause for this purpose.

In instalments as follows: \$        on the        day of        192    , and a like sum quarterly thereafter on the        days of        , and        in each year until the full amount of principal is paid, together with interest thereon from the date hereof at the rate of six per centum per annum, payable quarterly, with each instalment of principal.

Simple changes in the wording will permit of the use of this form for monthly instalments or semi-annual instalments. It is usual for facility in bookkeeping to provide for interest payments at the same time that each instalment of principal becomes due, but this is not necessary. Interest may be made payable at any intervals stipulated. If the borrower desires the option of paying more than the fixed instalment on any due date, this may be provided for by inserting the words "or more" following the amount of the agreed instalment. The lender however does not wish to receive some odd amount of payment, although he is willing to permit the borrower to increase his payment. He therefore should have it provided that the extra payment be a certain amount or a multiple thereof, as \$500 or \$1,000, \$1,500, \$2,000, etc. The borrower on his part may have agreed to pay instalments of \$500 or more in the amount of \$250 or a multiple thereof. Suppose he pays \$1,000 on a certain due date; if no other provision be inserted in the bond he is bound to pay the usual instalment on the next due date. He may not be able to do so and so become in default, although he had really paid the instalment in advance. He may guard against this situation by having it stipulated in the bond that extra payments are made "in anticipation." The clause should then read substantially ".....dollars or more, in the amount of.....dollars or a multiple thereof, in anticipation, on the .....day of" etc.

**Default clause.**—The property pledged as security might be sufficient at the time the loan is made, yet if a large amount of unpaid interest accumulated, the security might not be great enough to cover both principal and interest. So likewise the owner might permit taxes and assessments to go unpaid. These liens are ahead of the mortgage and would consequently depreciate the security. To prevent the happening of these contingencies the default clause is inserted in the bond. Under the terms of this clause the total amount of the bond becomes immediately due if the interest is not paid within thirty days after it becomes due, or taxes or assessments remain unpaid for thirty days after they become due. If the principal of the loan be payable in instalments this clause should provide for default in such payments. This clause protects the lender, who can thereby check within a short period any wastage of his security. Should any default occur, he can foreclose on the property at the end of the stated grace period.

The mortgage given with the bond contains, in addition to the default clause, many other provisions for the protection of the lender and these are incorporated into the bond under the last sentence in the bond which begins "all of the covenants" etc. Occasionally the insurance clause is inserted in the bond, by the terms of which the borrower agrees to keep the property insured against fire for the benefit of the lender. The property is security for the loan. If it burned down the security would lose most of its value. Fire insurance protects against this contingency. Should there be a fire loss the insurance is payable to the lender to the extent of his loan and interest.

**Execution of bond.**—The bond should be executed in the same manner as a deed. It must be signed. It need not be witnessed nor acknowledged since it is not usually recorded. The better practice however is to have the signature both witnessed and acknowledged. It should be sealed, although not essential, as the time limitation within which suit can be brought upon a sealed instrument is longer than upon one not under seal.

**Enforcement of bond.**—Customarily if the loan or interest or taxes be not paid, the lender seeks relief by foreclosing the mortgage upon the land, as in this action he can not only enforce the mortgage against the security but may ask for judgment upon the bond, in case the amount realized upon the sale of the land be not sufficient to satisfy his claim. However the bond is an instrument for the payment of money, and nothing prevents the lender suing upon the bond, without regard to the mortgage. If a judgment in such action will not enable the lender to collect his claim, he may then, upon permission of the court, sue to enforce the mortgage by foreclosure.

**Usury.**—In nearly all States a maximum rate of interest is fixed by law. For the lender to collect more than that rate is usury. When a usurious loan is made in some States the lender may collect only the maximum legal rate of interest, in others he loses all interest, while in some the penalty is loss of the entire amount loaned and interest. In most States however, a corporation is not permitted by law to plead the defense of usury. If therefore the borrower be a corporation, the lender may exact any rate of interest the borrower agrees to pay. This inability of corporations to seek relief in the usury laws has resulted in innumerable corporations coming into existence to operate in realty; lenders feel more secure in loaning to



them, especially if a fee or commission be charged for making the loan.

Money for mortgage loans is purely a commercial commodity. Its value depends on whether or not it is plentiful. When plentiful the interest rate is low; when scarce, high. This is not a matter which can be regulated by law; it is purely economic. The usury laws do not protect the borrower. In fact they usually harm him. For when money is valuable the lender will see that he gets a fair return, and since that may exceed the maximum allowed by law, the lender fixes the interest rate in the bond at the maximum allowed by law and collects the difference as a fee or commission for lending. This subjects the lender to the possibility of losing the entire amount of his loan, or of engaging counsel to defend a claim of usury, and he naturally charges an additional amount for taking the risk. Consequently, if the legal maximum were six per cent, and eight per cent would give the lender a fair return, he collects not only that amount but something extra as a safeguard. This amount is paid by the borrower. So the usury laws actually add to his burden.

**Taxation.**—At the present time the United States collects a tax upon all bonds at the rate of five cents for each \$100. This tax is paid by the borrower who must affix to the bond and cancel proper internal revenue stamps for the appropriate amount. Bonds are personal property and taxable as such. In many States, including New York, this tax is not levied and collected annually, but is satisfied by the payment at the time the mortgage is recorded, of a certain percentage of the amount of the loan. In New York the rate is one-half of one per cent of the principal amount. In theory this tax is upon the lender; upon his personal property, the bond. Actually the law works out quite differently, as in nearly all cases the borrower is compelled to pay the amount of the tax as one of the expenses of procuring the loan.

**History of mortgage lending.**—Anciently the borrower deeded his property outright, as security, to the lender, who thereafter was its legal owner. In case of any default he took possession. All the borrower retained was an equitable right to be given back his property if he fully satisfied the loan and interest. He had merely an "equity of redemption." In some States this system is still used, except that until a default occur the borrower retains possession of the property.

In New York and most States however a mortgage is not an actual transfer of title, but only creates a lien, under which in case of default the lender may proceed to collect from the property. The mortgage not being a transfer of title, is personal property. As such it may be passed by assignment, and upon the lender's death goes, not to his heirs as if real property, but to his executors or administrators. Since it is only a lien, there may be a first, second, third or as many mortgages on the property as its owner can procure, each being subject or subordinate to all prior mortgages.

**Form of mortgage.**—The form of mortgage varies somewhat in the several States. In New York the form is prescribed by statute. It is substantially similar to that of many other States and is as follows:

THIS MORTGAGE, made the \_\_\_\_\_ day of \_\_\_\_\_ nineteen hundred and \_\_\_\_\_  
BETWEEN

and \_\_\_\_\_ the Mortgagor  
the Mortgagee,

WITNESSETH, that to secure the payment of an indebtedness in the sum of \_\_\_\_\_ Dollars,  
lawful money of the United States, to be paid on the \_\_\_\_\_ day of \_\_\_\_\_  
nineteen hundred and \_\_\_\_\_, with interest thereon to be computed from \_\_\_\_\_  
at the rate of \_\_\_\_\_ per centum per annum, and to be paid  
according to a certain bond or obligation bearing even date herewith, the  
Mortgagee hereby mortgages to the Mortgagee

AND  
the Mortgagee covenants with the Mortgagee as follows:

1. That the Mortgagor will pay the indebtedness as hereinbefore provided.
2. That the Mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the Mortgagee.
3. That no building on the premises shall be removed or demolished without the consent of the Mortgagee.
4. That the whole of said principal sum shall become due after default in the payment of any installment of principal or of interest for \_\_\_\_\_ days, or after default in the payment of any tax, water rate or assessment for \_\_\_\_\_ days after notice and demand.
5. That the holder of this Mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.
6. That the Mortgagor will pay all taxes, assessments or water rates, and in default thereof, the Mortgagee may pay the same.
7. That the Mortgagor within \_\_\_\_\_ days upon request in person or within \_\_\_\_\_ days upon request by mail will furnish a statement of the amount due on this Mortgage.
8. That notice and demand or request may be in writing and may be served in person or by mail.
9. That the Mortgagor warrants the title to the premises.

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagee.

In presence of:

(ACKNOWLEDGMENT)

The opening words "This mortgage" merely identify the instrument as such. In many States the form commences "This indenture." Next appears the date; not a requisite, but convenient and customary. The parties are then named, the borrower first, followed by the lender, just as in the bond. After each name, must, however, be added the party's residence. In this form they are designated mortgagor and mortgagee, respectively. Often they are stated to be "party of the first part" and "party of the second part." While a mortgage is personal property, it nevertheless passes an interest in land. Consequently if the borrower be married, unless the mortgage was given to secure purchase money, his wife must join in the mortgage in order to surrender her dower right. Her name should be added as mortgagor following that of her husband, and it should be indicated that she is his wife by appropriate words; as "John Jones and Mary Jones, his wife." "Witnesseth" is no more important here than in a deed.

**Statement of the obligation.**—"That to secure the payment of an indebtedness," etc., "according to a certain bond or obligation bearing even date herewith." In these words the obligation of the bond is stated. Care should be exercised to state the indebtedness and its terms of interest, etc., and date of repayment exactly the same in both bond and mortgage. Any variation may create later trouble. The form given has the interest clause partially printed. Should the bond provide for instalment principal payments the wording may be easily altered to suit the requirement.

The bond is not usually recorded; the mortgage should be. Many parties to mortgage transactions do not wish the terms of the loan to become known to anyone examining the records. It has therefore become quite common to omit a specific statement of the terms of the obligation in the mortgage. If such secrecy is desired, this provision in the mortgage may be made to read "that to secure the payment of an indebtedness in the sum of.....dollars (stating the principal sum) secured to be paid, together with the interest thereon according to a certain bond or obligation," etc. This wording is not improper any more than it is wrong for the man who discounts his paper at a bank to fail to publish to the world the terms upon which he secures credit.

**The pledge.**—As security for the performance of the obligation just stated, "the mortgagor hereby mortgages to the

mortgagee" the realty pledged as security. Here should be set forth a description of the property. It should be described with just as much particularity as in a deed. By legal construction the quoted words at the beginning of this paragraph, mean substantially that the mortgagor conditionally transfers a right in the property to the mortgagee, of such nature that if the loan be not paid in accordance with the bond, the property may be sold to satisfy the claim. In many States the mortgage actually states that the borrower "grants and releases" the property to the mortgagee. Where such form is used the description is followed by a "defeasance" clause which states that if the loan and interest is paid in due course, the rights of the lender are defeated and his interest in the property ceases. (Appendix form 45.)

**Purchase money mortgages.**—In many sales of realty the purchaser does not wish to pay the full price in cash. Under such circumstances it is stipulated in the contract between the parties that the purchaser give back to the seller his bond and a mortgage on the property to secure part of the price. This is known as a purchase money mortgage. Such a mortgage becomes a lien contemporaneous with the passing of title. It is prior to any lien against the purchaser. Even if he be married it is a lien ahead of his wife's right of dower. Consequently the wife need not join in a purchase money mortgage. In order that there be no doubt of its status, it is customary to insert in the mortgage, following the description, what is known as a "purchase money clause" reading substantially as follows:

This mortgage being a purchase money mortgage given and intended to be recorded simultaneously with a deed this day executed and delivered by the mortgagee to the mortgagor, this mortgage being given to secure a portion of the purchase price in said deed expressed.

**Covenants.**—The New York statutory form of mortgage contains nine covenants made by the mortgagor. Not all of these must be used; occasionally some of them are altered or omitted, and often others are added. First will be considered the usual covenants. These appear in the form of mortgage set out in this chapter.

By the first covenant the mortgagor agrees to pay the indebtedness, and not only that but to do so as provided in the mortgage. It implies also that if there arise any default in carrying out the terms of the obligation, the lender may have

the property sold to satisfy his claim in due legal course by means of an action in foreclosure.

The second and fourth covenants are usually set forth in the bond. They should accord in both instruments. Their meaning is explained in the discussion of the bond. (Page 87.)

The third covenant prohibits the removal or demolition of any building on the pledged property. This prevents any lowering of the value of the security. The land might be worth \$2,000; the building \$8,000. Together they are sufficient security for a mortgage loan of \$5,000. But if the building were removed the pledge would be entirely inadequate. Should the borrower attempt any such act, he may be enjoined by court order at the instance of the lender, who may also forthwith call the loan and commence foreclosure.

The fifth covenant is known as the "Receiver clause." An action to foreclose the mortgages takes several months. During this time the owner is collecting the rents, thereby getting all the benefits from the property, and knowing that he will soon lose it, he neglects to expend anything in keeping up the property. When the mortgage contains this clause, the mortgagee can prevent this injustice, by applying for the appointment of a receiver. The receiver steps into the owner's shoes, collects the rents and pays the carrying charges from the time of his appointment till the sale of the property in the action. Whatever net profit he has in his hands at the termination of his duties becomes an additional fund from which the mortgagee may satisfy his claim.

The sixth covenant is an agreement on the mortgagor's part to pay all taxes, assessments and water rates. If they are not paid the mortgagee may call a default under the fourth covenant. But this covenant goes further than that. It permits the mortgagee to pay them, if the mortgagor fails to do so, and add the amount of such payments to the amount of principal and interest due him.

By the seventh covenant the mortgagor obligates himself to give, within a certain time (usually fixed at five days upon request in person or ten days upon request by mail) a statement of the amount due. Such a statement is known as an "estoppel certificate." Its purpose is readily explainable. If the holder of the mortgage desires to sell it, he is enabled by this covenant to place in his assignee's hands a statement by the owner of the land of how much is owing on the mortgage. The pur-

chaser is thereby assured that no claim of payment or reduction can be later made by the debtor.

The eighth covenant specifies that the notices provided in the various covenants may be served either personally or by mail. Without this clause it would be necessary to secure personal service on the owner, a thing which is often very difficult to accomplish, particularly if the owner desires to evade service. A notice deposited in a regularly maintained mail receptacle, postpaid, properly addressed is presumed to have been received by the addressee.

The ninth covenant is similar to the covenant of warranty in a deed. It is a guarantee by the mortgagor that he has good title to the property described in the mortgage.

**Special clauses.**—In addition to the nine foregoing covenants, it is usual to insert, when appropriate, certain additional clauses for the protection of either or both of the parties.

**Sale in one parcel.**—One of these special clauses provides in substance that in the event of foreclosure of the mortgage the mortgaged premises may be sold in one parcel. Such a clause is naturally needed only in a mortgage which covers more than one lot. The mortgage might cover four adjoining lots A. B. C. and D. Should the holder of the mortgage, by reason of a default, foreclose on the property he must offer the lots for sale one at a time and only so many are sold as will bring sufficient to meet his claim. In addition if the mortgagor has sold any of the lots before the foreclosure, the mortgagee is met with the rule that the lots must be sold in the action "in the inverse order of alienation," i.e. he must first sell such of them as are still owned by the mortgagor, then the rest by selling, the last one sold, first and so on back to the first lot sold by the mortgagor. Should a sale of the lots separately not produce sufficient to pay the mortgagee's claim he may then offer them for sale in bulk taking whichever offer brings the highest bid. This entails inconvenience and many properties are of more value in one piece. Hence the clause permitting sale in one parcel is usually used unless the property mortgaged be a single lot.

**Brundage clause.**—Mortgages as has been said are personal property and hence subject to tax as such. The lender in considering the desirability of an investment takes into consideration not only the interest return, but also any taxes which may reduce that return. In case the taxes rose materially the

mortgage would pay a lower net return. The mortgagee may protect himself by making it possible for him to call in his loan in the event of an increase of taxes. In New York and several other States this clause, known as the "Brundage" clause is used, particularly in loans made by the title companies. Its usual form follows:

In the event of the passage after the date of this mortgage of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debt secured by mortgage for State or local purpose, or the manner of the collection of any such taxes, so as to affect this mortgage, the holder of this mortgage and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of the land requiring the payment of the mortgage debt. If such notice be given, the said debt shall become due, payable and collectible at the expiration of said thirty days.

**Release clause.**—A mortgage may cover several houses or a number of lots. An operator may have bought a tract of land and subdivided it into lots and placed a mortgage on the whole. His scheme is to sell the lots to individual purchasers. But the mortgage covers each lot; and it is necessary to sell separate lots free of the mortgage. The most convenient manner in which this end may be accomplished is by means of a clause termed "release schedule" inserted in the mortgage. By this schedule a release price is placed on each lot. When this amount is paid, the mortgagee executes an instrument which releases the lot from the mortgage. Of course, even if such a clause were not in the mortgage, the operator could arrange for a release, but it would be a matter for negotiation as to the amount to be paid each time a lot were sold. The schedule in the mortgage saves all this inconvenience and makes it possible for the operator to know in advance just what he must pay to release each lot. It is customary to set the release price on each lot slightly higher than that lot's fair proportion of the loan. This is done so that after each lot is released, the balance better secures the loan. (Appendix form 51.)

**Clauses in junior mortgages.**—Junior mortgages (those subject to others superior in lien) usually contain two appropriate clauses. The first is for the protection of the mortgagee and provides that if the mortgagor default in payment of interest on any prior mortgage, such interest may be paid by the mortgagee, added to the amount of his loan and he may forthwith declare a default and proceed to foreclose.

This is a very important matter to the junior mortgagee. Should the prior mortgage be foreclosed, he may be compelled either to abandon his lien or else purchase the property and replace the prior mortgage. This clause permits him to prevent a default in the prior mortgagee, while he forecloses his own mortgage. (Appendix form 53.)

**Lifting clause.**—The other clause usually found in junior mortgages is the “subordination clause.” This is designed for the protection of the mortgagor, the owner of the property. The junior mortgagee when he made his loan was willing to take as security the property already subject to a mortgage or mortgages to secure a certain sum or sums. There should be no reason why his mortgage should not continue in the same subordinate position. But without any provision to cover the situation, the junior mortgagee’s mortgage would automatically become a first lien upon payment of the prior mortgage claims. Hence it is customary to insert a clause by which the junior mortgage’s position is fixed. The following is a satisfactory form:

This mortgage is subject and subordinate to a mortgage given to secure the payment of \$..... and interest, recorded in the office of the ..... of the County of ..... in Liber ..... of Mortgages, at page ....., now a prior lien on said premises, and shall be and remain subject and subordinate to said mortgage and to any renewal or extension thereof or to any new mortgage given to replace it to secure an amount not exceeding the amount of said mortgage.

**Special forms of mortgages. Building-loan mortgage.**—In addition to the form of mortgage which has been considered there are two other forms of mortgage which are used when appropriate.

The building loan mortgage is distinct in that the amount of the loan is not fully paid to the borrower when the bond and mortgage is delivered. Its purpose, as the name implies, is to aid a builder in financing the erection of a building. Naturally the amount of the loan is based upon the value of the land and the completed building. The lender would be foolish to advance the entire loan before erection, yet the builder does not wish to commence work till he knows he can rely on the loan being made. To provide for this situation, the building loan mortgage came into use. An agreement is made between the lender and borrower and usually filed in addition to the bond and mortgage. This agreement provides in substance that the borrower shall erect a certain building (sufficiently de-



scribing it) on the land and that the lender shall loan upon the security of such land and building a specified amount to be repaid upon completion of the building. The agreement further provides that the amount of the loan shall be advanced to the borrower in instalments as the building progresses, stating either that the amount and times of advances are to be at the lender's discretion, or in certain amounts at fixed periods in the course of construction. The interest specified in the agreement, as well as in the bond and mortgage, is payable only on the amounts of the instalments from the date of advance. It is often provided that the loan shall continue until a definite period after completion. This enables the builder more readily to sell his house. (Appendix forms 54 and 55.)

**Trust mortgages.**—These are used when the amount of the loan is larger than any one person would be willing to advance. Such would be a loan of millions of dollars upon the property of a railroad. In these loans the mortgage is made to a trustee. Instead of a single bond, many are issued; one or more to each person advancing a part of the loan, depending upon the denomination of the bonds. The trustee acts as such for the benefit of the bondholders. The mortgage contains in addition to the usual clauses, various provisions concerning the rights and duties of the trustee and the bondholders.\*

**Satisfaction of mortgage.**—Every loan on bond and mortgage contemplates payment, ultimately, of the amount loaned with interest. The mortgage having been recorded constitutes an encumbrance on the mortgagor's title. When he repays the loan, he should therefore not only have the bond and mortgage surrendered to him, but insist upon the mortgagee delivering a "satisfaction piece." (Appendix form 47.) This is a formal instrument describing the mortgage and stating that it is paid. It must be signed by the mortgagee, who should acknowledge it. It may then be recorded in the public office in which the mortgage was recorded. When this is done the original record of the mortgage is marked cancelled, and no longer appears as an encumbrance on the property. Much trouble may arise from failure to get a satisfaction piece, or, having it, from failure to record it. The mortgage remains of record indefinitely and if the satisfaction be not filed, it may be very difficult years later to prove its payment.

\*For example of this form of Mortgage, see Jones-Laughlin Mortgage in Gerstenberg, "Materials of Corporation Finance," p. 189.

## REMEDIES OF MORTGAGEE

**Mortgagee in possession.**—In event of failure to pay the loan when due or any other default, the mortgagee has numerous remedies in respect to the property pledged by the mortgagee.

The mortgagee may, with the consent of the mortgagor, take possession of the mortgaged property. He is then known as a "mortgagee in possession." This gives him no greater legal title to the property than he had under the mortgage; it merely entitles him to collect the benefits of the property. His possessory right ceases as soon as he has been paid either from the revenue out of the property or by the mortgagor. This form of remedy is seldom utilized by the mortgagee as he must account for all receipts from the property and years may pass before he has collected the amount of his claim.

**Foreclosure by advertisement.**—The mortgagee may foreclose his mortgage by exercising the right given him in the mortgage of selling the property to pay the indebtedness. It is not a proceeding in a court, but consists of giving notice to the owner, if he can be found, and advertising a public sale of the property—hence its name "foreclosure by advertisement." It has one great fault; it does not place the purchaser at the sale in possession of the property. The owner may refuse to surrender possession. The purchaser is then able to get possession only by means of a tedious, expensive action in ejectment. For this reason, although apparently the most direct remedy, foreclosure by advertisement is seldom used unless the mortgagee be in possession at the time of the sale.

**Legal foreclosure.**—The usual remedy is in "foreclosure by action at law." A legal action is commenced in which the owner of the property and the maker of the bond and all persons who have any interest in the property subordinate to the mortgagee, are made parties defendant. Of course prior lienors should not be made parties; their claims cannot be affected. At the time of commencing the action, a notice of the action should be filed in the office of the clerk of the County in which the property is located. This "notice of pendency" or "Lis Pendens" as it is often erroneously termed, is a warning to everyone that the action has been started and that the defendants' rights are being attacked. Anyone acquiring the rights of any defendant thereafter assumes them with presumed knowledge of the action.

The complaint describes the bond and mortgage, states that the interests of the defendants are subordinate to the mortgagee, that a default has occurred, that a certain sum and interest is due the mortgagee, and asks for a judgment directing the sale of the property free of the interests of all the defendants; that the mortgagee be paid his claim and expenses from the proceeds of the sale; and, if the sale realize not enough for that purpose, that a judgment for deficiency be given against the maker of the bond.

A copy of the summons and complaint must be served on all the defendants. They are given a certain time in which to formally set up any claim they may have contrary to the allegations of the mortgagee's complaint. Should any of the defendants make answer to the complaint, the issue must be tried out.

If no answer is made, or if the issue raised by answer has been found in favor of the mortgagee, he proceeds to judgment. The amount due him is ascertained and a formal judgment entered in his favor directing the sale of the property by a referee or master designated or by the sheriff. All defendants who have appeared in the action are given notice of the sale, which must also be advertised as the law requires. Any person may bid at the sale which is held at public auction in a public place. If the property be a plot consisting of more than one lot, and there be no clause in the mortgage permitting the sale in one parcel, each lot must be offered for sale separately.

Upon the sale the property may or may not bring enough to pay the mortgagee's expenses and his claim. He should protect himself by seeing to it that either the bid of an outsider is sufficient to cover him or else that he is the highest bidder. In this way, if the property does not bring enough to satisfy his claim he gets the property, while if more than enough is realized he does not care what becomes of it. The amount bid is paid to the officer conducting the sale, who first pays the expenses of sale, then the expenses of the action. After he has done this he pays the mortgagee's claim or as much as the balance will pay. If he has more than sufficient to satisfy the mortgagee's claim, he retains the surplus and deposits it in the custody of the Court.

He then files a report of his proceedings with the Court. If his report shows that he did not realize sufficient to pay the mortgagee's claim, he specifies the amount of the deficiency, and

the mortgagee may enter a judgment against the maker of the bond in that amount. Should there be a surplus the referee must specify its amount. Any person having a valid claim against the property, which was cut off in the foreclosure, may commence a "surplus money proceeding" in which the rights and order of priority of all claimants is ascertained and the surplus divided, as far as it will go, to those entitled, in order of their priority.

The purchaser at the sale upon paying the amount of his bid receives a deed of the property from the officer who conducted the sale. This deed entitles him to possession of the property, and he may have the aid of the court in removing from possession any one who was made a party to the action. It is for this reason that all tenants and persons in possession of the mortgaged property are made defendants, even though they have no leases or any recorded claim to the property.

## CHAPTER IX

### TRANSFER AND EXAMINATION OF TITLE AND TITLE INSURANCE

**History of methods of transferring title.**—Probably the earliest transfers of title were accomplished by the stronger taking possession from the weaker. This system was unjust and as society developed, protection was given to the owner in preserving his possession. Under the feudal system the sovereign or king owned all the land. He parcelled out the land to his lords who in turn each subdivided his portion among his retainers. This subdivision went on indefinitely. No one had any title save the king. Each had only a "feud" or right to possess the land during the pleasure of his overlord; the tenant being bound to give his superior aid and fealty, the superior to protect the tenant. The tenant could not even give up his possession or transfer it without his overlord's consent. The evils of this system finally resulted in laws by which it was made possible for a tenant to sell his holding and substitute another in his place.

The early method by which a transfer of realty was accomplished, was by mere delivery of possession. A man who had been in possession of land for many years, and whose claim to it had never been questioned, was presumed to be its owner. No one could contradict his claim of title. This is the foundation of our present law of "title by adverse possession." If such owner desired to sell he simply delivered to the purchaser a clod of earth from the land, in the presence of witnesses, saying at the time some appropriate words such as, "I put you in possession of this land." This was as nearly an actual delivery as the subject matter of sale would permit.

**The statute of frauds.**—Transfers by delivery only necessarily gave rise to many disputes. There being no written record of the transaction, false statements permitted gross frauds. Possession was forcibly taken and held. The "Statute of Frauds" was finally adopted. This prevented fraud by declaring that no transfer should be enforceable unless in writing. From this statute flows the present system of transferring title by means of written instruments; the deed, mort-

gage, lease, etc. The Statute of Frauds in substance has been enacted into the law of all the States.

**Present methods of transferring title.**—The term title must be considered as including not only the full fee simple but any interest in the real property. Under strict legal rules title to real property can be transferred in only two ways, either by operation of law or by purchase: transfer by operation of law taking place only when the title passes to the heirs of an owner who dies leaving no will. Every other transfer is considered a purchase.

For all practical purposes, however, as indicated in the first chapter, title to realty may be transferred in any one of the following ways:

1. By descent.
2. By will.
3. By voluntary alienation.
4. By involuntary alienation.

**Title by descent.**—One who dies leaving no will, is said to have died intestate. Such property as he may have owned at his death passes to his family by operation of law. The rights and priorities of the persons entitled to share in his estate are fixed by law in the several States. Those to whom the real property passes are termed heirs, while those who take the personal property are called next of kin. The widow curiously enough while she takes an interest in both the real and personal property is neither an heir or next of kin. As to the real property, if there be a widow, it immediately becomes subject to her dower rights. If there be children of the deceased owner, the realty is divided among them in equal shares, if they all be living. Should any of them be dead leaving children, such children divide equally the share their parent would have taken if living. For example; The deceased had four children, A. B. C. and D. A. B. and C. survived him. D predeceased him but left two children who were living at the death of their grandparent. A. B. and C. each receive one-fourth and the two grandchildren each one-eighth. If there be no children or issue of deceased children the property goes to the parents of the deceased and his collateral relatives i.e. brothers and sisters and their descendents in accordance with the law of the State in which the property is situate.

**Title by will.**—An owner may dispose of his property dur-

ing his lifetime, by deed, mortgage, lease, etc. He may also make disposition of it to take effect at his death. This is usually accomplished by will or as it is legally termed "last will and testament." The owner making the will is known as the testator, and having done so he is said to have died testate. The will must be executed with certain formalities, required by law. Upon the testator's death it is offered for probate to an appropriate court, which, if the will is regular and no valid objection be raised, admits it to probate, and a public record of it is made. While many laymen attempt to draw wills, such practise is exceedingly dangerous. Any error in form or manner of execution may invalidate the will and usually such error is not discovered until the will is offered for probate, when, the testator having died, it is too late to remedy the mistake.

A gift of real property is a devise and the recipient a devisee; of personal property a bequest or legacy, the recipient a legatee. These terms are often erroneously used interchangeably, and sometimes grave troubles arise from such carelessness. As has been said the will cannot cut off the wife's dower rights. Consequently it is usual for the testator to make some provision for his wife, stating that it is "in lieu of dower." Even such provision is binding upon her only in case she fail within a certain legal time to elect to take her dower rights instead.

A will should and usually does appoint an executor who is empowered to carry out its terms and provisions. Unless the will gives him rights and duties with reference to the realty, he has no interest in the real property. It passes to the devisees immediately upon the testator's death; the executor's duties being only to collect the personal property, pay debts and legacies, and account to the court.

**Title by voluntary alienation.**—Alienation may be defined for practical purposes as the transfer of the owner's interest and title by the owner to another. Voluntary alienation may be by gift or sale. It is the normal commercial real estate transaction; such as the deed of gift by a parent to his daughter of a home upon her marriage, or the sale of realty under a contract consummated by the delivery of a deed. Mortgages and leases are both instances of voluntary alienation.

**Title by involuntary alienation.**—Involuntary alienation is a transfer of the title without the owner's volition. Tax

sales are instances of involuntary alienation, also public sales in actions to enforce liens. The property of the intestate leaving no heirs, which passes to the State by escheat is a transfer of title of this class. An unusual example is the loss of the land, under certain circumstances, through erosion, or washing away. And of the same nature is accretion or the increase of an owner's land through the action of currents depositing soil adjacent to his land. His area is increased by no voluntary action of his.

Another example of involuntary alienation is known as title by "adverse possession." This situation arises where the record owner of the property has failed to keep possession and the property has been seized adversely by another. The elements for a title by adverse possession differ in the various States but in general are as follows:

1. The possession of the claimant must be open and notorious.
2. It must be hostile to and to the exclusion of the true owner.
3. The possession must be under a claim of title.
4. Possession must continue uninterruptedly for at least twenty years.

If the claimant can prove all of the above elements he has a good title to the property and all the rights of the record owner cease. It is, however, exceedingly dangerous to purchase property from one whose sole claim of ownership is based on adverse possession. This is for the reason that a title running through a chain of deeds is perpetuated on the records; while a title by adverse possession depends for its validity upon the above elements, no proof of which appears of record, consequently if the person or persons who know the facts concerning the adverse possession die, it is no longer possible to prove the elements. No one should acquire title from an adverse possessor except upon competent legal advice.

**Recording of conveyances.**—Possession of property is notice to the world that the possessor claims or has some title to the property. An owner in possession under a valid deed may be discovered to the actual knowledge of any one who goes to the property. However it is not always practicable for the owner to be actually in possession. He may own many buildings or the structure may be an office or factory building or vacant land. One might go to the premises many times



and not find the owner. Some method of constructive notice of ownership had to be devised as a substitute for actual knowledge, for the protection of both the owner, to relieve him of the necessity of remaining constantly in possession, and of persons who, desiring to deal with the property, would wish to ascertain the real owner. Otherwise A, an owner might sell his land to B giving him a deed, and B not taking possession, A might turn about and sell it to C. Or he might give a mortgage to D to secure a loan after he had sold to B. To prevent such frauds, recording acts have been enacted in all States. These provide that all instruments affecting real property may, when properly proven, be recorded in a certain public office in the county where the property is located. All such instruments are copied on the records and indexed. When so recorded they are notice to the world with exactly the same effect as if the owner were actually in possession.

Constructive notice is just as good as actual notice. Consequently one dealing with real estate is bound by all recorded instruments. Suppose A sells a piece of land to B and B fails to record his deed, A then sells it again to C, who knows nothing of the prior sale to B and records his deed before B's deed is recorded. Under the theory of notice C's right to the property is ahead of that of B, for the reason that B was not in possession and the records at the time C bought the property showed title in A. B should have protected himself by recording his deed as soon as he received it. Constructive notice is however no better than actual knowledge. If C, in the case above, had known of B's purchase, he could not obtain any right superior to B by virtue of recording his deed first.

**Proof of execution.**—No instrument may be recorded unless proven either by acknowledgment of the signor or the affidavit of a subscribing witness. The following are the officials who are authorized to take acknowledgments; notaries public, commissioners of deeds, justices of the peace, judges of courts of record, mayors of cities, ambassadors and ministers residing abroad, consular agents, and commissioners of deeds appointed by governors of States to take acknowledgments in other States. Each of these officials has definite limits of authority. He cannot act outside the area of his authority. He may take therein an acknowledgment of an instrument to be recorded elsewhere. When he does this the instrument

cannot be recorded elsewhere without a certificate attached from the clerk of the court of the county or city in which the official is qualified to act, stating that the official is qualified to take acknowledgments of instruments intended to be recorded in that State, that the signature of the official is known to the clerk and the signature affixed to the certificate of acknowledgment is genuine. (Appendix form 29.)

**Examination of records.**—It is readily seen that, not only must one who contemplates a real estate transaction inspect the realty involved, but must also procure a thorough examination of the records to ascertain who is the owner, the condition of the title and all instruments concerning which the law presumes everyone to have notice. The examination reveals the entire history of the title from the earliest record to the present time; shows the chain of deeds, wills and actions by which the property passed from owner to owner, as well as mortgages, leases, restrictive and other agreements and instruments encumbering or affecting the title or use of the property. The examiner first abstracts all the instruments conveying the title; that is, makes a separate digest of each. This gives him what is known as a chain of title. He may find his chain very simple, as a grant from the State to A and successive deeds from A to B, B to C, C to D, D to E, E to F, F being the present owner. Usually some one in the chain has died owning the property. In that event he may find deeds from A to B, and B to C and no deed from C although F claims ownership. The probability is that C has died owning the property. In that case his will has been probated (if he left one) and is on record in the Court. If he left no will, it will usually be found that an administrator of his personal property has been appointed, and the papers on file for that purpose state the names of his heirs. The examiner accordingly turns to the records of deaths and wills to fill the gap, and finds the will or record of death of C. This supplies him with the names of C's devisees or heirs and he then resumes his search by locating the deed from them to D and so continues his chain. The chain is often broken by some legal action, as for instance a foreclosure. Some person in the chain may have mortgaged the property. The chain of title stops in D. A search of the records of legal actions shows that D was cut off in a foreclosure suit. Examination of the judgment in the action reveals the name of the official who sold and gave a deed of the property.

Search against him will show his deed and the chain is resumed. After the chain of title is completed separate search is made against each owner for the period he owned the property, to ascertain what encumbrances he may have placed upon the property.

The examiners completed work in an "abstract of title." (Appendix form 58.) In many States the abstract passes with each sale of the property, being kept up to date by the addition of a memorandum of each new transfer. It is deemed so valuable that in some States it is customary to provide in the contract of sale that the seller deliver the abstract of title at or before the delivery of the deed. (See Illinois contract of sale, appendix form 10.)

**The title examiner.**—The law of real property is complicated and technical. The average person dealing in real estate has no knowledge of these rules nor has he time to examine the title. He usually employs counsel or a conveyancer to do this work for him; someone who is familiar with the records, their location, indices and more important, the law applicable to the various situations in the title which the examination might reveal. The responsibility of the examiner to his employer should be noted. He does not guarantee the result of his search. He simply holds out, first, that he has sufficient knowledge and experience to be a competent examiner of titles and, second, that he will with diligence use his knowledge in accordance with the appropriate rules of law. His report of title is only his opinion; backed to be sure by his legal training and a careful scrutiny of the records. The records are copies of instruments; he is not responsible if the signature on some deed in the chain later proves to be a forgery. C may have died intestate owning the property. X and Y thereafter conveyed the property by deed reciting that they are the only heirs of C. Z may thereafter claim to have been an heir as well. The examiner is not to blame. He may pass upon some situation in the title in accordance with the law as then in force. Later a court may reverse the decision upon which the examiner based his opinion. For none of these things is the examiner liable yet his employer may lose large sums as a result.

**Title insurance.**—The system of title insurance came into use as a remedy for the previously described situation. Like all other insurance it is a distribution of loss among all in-

sured. Title companies are organizations authorized by law to examine and insure titles. They charge a fee or premium for their service. This premium is usually based upon the value of the property. It is an amount which covers not only the expense of the examination but an additional amount which is placed in a general fund to cover losses insured against. The company makes a careful examination of the title. If it is satisfied that there are no apparent defects in the title, it insures against any loss. Should there later be a loss, by reason of forgery or any other defect, arising prior to the insurance, the title company pays the loss. This in brief is the theory of title insurance.

In seeking title insurance the person about to acquire the title or some interest in the real property first applies to the title company. He agrees to pay a certain fee for examination of the title. The title company on its part obligates itself to make an examination of the title and to insure against undiscovered defects; it does not agree to insure against defects and encumbrances which may appear from the examination.

The applicant should therefore insist that he be given a "report of title" after the examination is completed. This is a statement setting forth a description of the property, the name of the record owner and a detailed list of all objections to the title, i.e. encumbrances and defects found upon the records. The reason for having this report is simple. It enables the applicant to know the exact condition of the title. If he is a purchaser, his contract stipulates that he shall take title subject to certain encumbrances. The report sets forth all the encumbrances found on the records. The purchaser demands that the seller dispose of all those not agreed upon in the contract, before delivering a deed. Or if the applicant had agreed to make a mortgage loan he insists that the owner render his title free and clear before the loan is made.

After the objections not agreed upon have been removed, the title is closed, and the instruments passing title are delivered and recorded. The title company now prepares to issue its policy of title insurance. There may of course still be encumbrances on the property, which have been agreed upon. For example, the transaction may be a sale of the property subject to one or more mortgages. The policy should be carefully examined to see that the property is properly insured without any exceptions other than those agreed upon.

**Title insurance policy.**—The usual form of title insurance policy contains four parts:

1. Agreement of insurance.
2. A schedule describing the subject matter of insurance.
3. A schedule of exceptions.
4. Conditions of the policy.

The agreement of insurance usually states substantially that the company "in consideration of the payment of its charges for the examination of this title to it paid doth hereby insure and covenant that it will keep harmless and indemnify. . . . . (hereinafter termed the assured) and all other persons to whom this policy may be transferred with the assent of this company, testified by the signature of the proper officer of this company, endorsed on this policy, against all loss or damage not exceeding. . . . .dollars which the said assured shall sustain by reason of defects, or unmarketability of the title of the assured to the estate, mortgage or interest described in Schedule 'A' hereto annexed, or because of liens or encumbrances charging the same at the date of this policy. EXCEPTING judgments against the assured and estates, defects, objections, liens or encumbrances created by the act or with the privity of the assured, or mentioned in Schedule 'B' or excepted by the conditions of this policy hereto annexed and hereby incorporated into this contract, THE LOSS and the amount to be ascertained in the manner provided in the annexed conditions and to be payable upon compliance by the assured with the stipulations of said conditions and not otherwise." This agreement is dated and executed by the proper officers of the company under its corporate seal.

The company's charge is a fixed rate based usually on the amount of insurance named. Unlike other insurance it is a flat fee, paid but once. Customarily the company insists that the property be insured for at least its full value. And the insured also should want this, as the company is in no case obligated to pay more than the amount set forth in the policy. The insured may if he contemplate improving the property, have his title insured for a greater sum than its value at the time of transfer. The date of the policy is very important. The company insures only against loss to the insured arising from some defect at or prior to the date of the policy. The

insured should insist that the policy be dated at or after the time title is closed. The policy being issued under seal the time to sue upon it does not begin to run until a loss is sustained. The statute of limitations may be twenty years. The loss might not occur till fifteen years after the policy were issued. In such case the right to sue on the policy would not expire till thirty-five years after the policy's date.

The schedule describing the subject matter of insurance usually follows the agreement of insurance. It is divided into three parts. First it states the estate or title of the insured. Second is a brief description of the instrument under which the insured acquired his estate or interest. Third is a description of the premises covered by the policy. This description should be sufficiently detailed so that the property may be easily identified. The policy covers not only the land but all buildings and fixtures thereon. It does not cover personalty. The insured should see to it that the description is clear.

The schedule of exceptions is practically the most important part of the policy. It sets forth a detailed list of all encumbrances and defects against which the company does not insure. Any loss arising from any of these exceptions is not covered by the policy. The insured should insist that only such encumbrances as he has agreed to be inserted. Much trouble has arisen on this point, and many companies insist before closing of title, that the insured consent in writing to such objections to the title as have not been removed. Nearly all companies refuse to insure against the rights of tenants and persons in possession of the property. Hence this exception usually appears. All encumbering facts shown by a survey are excepted, or if there be no survey, the policy will except "any state of facts an accurate survey may show."

The last part of the policy is a statement of the conditions of the policy. These conditions are seldom read but are very important. They specify the terms of the company's liability and the relations between the company and the insured. First it is stipulated that the company will at its own cost defend the insured in all actions founded on a claim of title or encumbrance prior to the date of the policy and thereby insured against. This not only assures the insured against loss but saves him the inconvenience and expense of litigation.

Should the insured contract to sell the property and the purchaser reject the title for some defect not excepted in the

policy, the company reserves the option of either paying the loss or maintaining at its own expense an action to test the validity of the defect. In such a case the company is not liable under the policy until the termination of the litigation.

If the policy is issued to a mortgagee, the company's responsibility arises only in the event that upon foreclosure the mortgage is adjudged to be a lien upon the property of an inferior quality to that described in the policy, or the purchaser at the foreclosure sale is relieved by the court of completing his purchase by reason of some defect not excepted in the policy.

The conditions of the policy also provide for arbitration in certain cases of disputes as to the validity of objections to the title insured. The policy covers the insured even after he has sold the property, if he be sued upon the covenants in his deed.

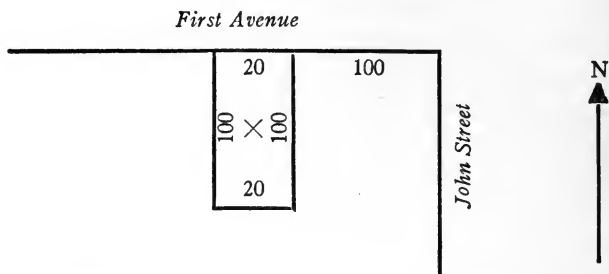
The policy is not transferable, except that if it insures a mortgagee and he sells the mortgage, his rights under the policy may be passed to his assignee. But even then the company's consent must be obtained.

Should there be a loss under the policy, the company, having settled the claim, acquires all the rights and claims of the insured against any other person who is responsible for the loss. This is based upon the legal doctrine of subrogation. The title company may be able to collect all or part of the loss from the person who caused the loss.

In any case where the company has paid a loss totalling the amount of the policy, it reserves the right to take over the property from the insured at a fair valuation. There is a very good reason for this provision. In some instances the title is defective, but can with time and effort be cured. The company in such an event pays the fair value to the insured, receiving a deed from him. It then owns the property, and at its pleasure can take such action as may be necessary to remove the defects in the title.

**Use of title policy.**—Of course the insured seldom needs to resort to his policy to recover a loss. But he should always refer to it, in subsequent transactions with reference to the property. It tells him at once just what property he owns and what are the encumbrances on it. If he later enters into a contract to sell the property, he should use the description in the policy and undertake to give a title subject to just those encumbrances stated as exceptions in the policy.

**Necessity for survey.**—The examination of title is simply a search of the records, revealing who appears from such records to be the owner of a certain particular piece of property. This search often shows nothing with reference to the physical condition of the property. For example the report of title states that A owns the lot X on the following diagram



There is nothing to indicate whether the land is vacant or improved, or if improved how the buildings stand with reference to the lines.

A survey is necessary for this purpose. The surveyor being given the diagram above, taken his instruments to the spot and ascertains the exact physical condition. He then furnishes a map of the lot in horizontal projection which shows not only the record lot lines as on the diagram above, but indicates the position of all buildings, fences and structures of any kind standing on or encroaching upon the lot. By this means the person dealing with the property knows the exact amount of the land and the relation to it of the structures. Important questions of marketability of title may depend upon the conditions shown by the survey.

**Encroachments on others.**—The building on the lot may cover more land than is within the lot lines. Suppose it encroaches on the highway. The street is either owned by the municipality or else it has an easement to use the street for public purposes. In either event no one has a right to encroach upon it, except by legal permission.<sup>1</sup> Such an encroachment if it be by a permanent structure may render the title unmarketable. Likewise the building may encroach upon a neighbor's land. If without his consent, the neighbor may be able, either to

<sup>1</sup> Recent decisions of the supreme court of New York have made it questionable whether the municipal authorities of New York City have authority to grant permission for any encroachment on a public street.



recover damages for the encroachment or compel the removal of so much of the building as encroaches on him. A purchaser could not be compelled to accept such a title. The survey also would indicate party walls. It should also be examined with reference to any restriction upon the property; as to whether or not they are violated by the building. The effect of such conditions could be determined only by one familiar with the law applicable in each case.

**Encroachments by others.**—The building may stand entirely upon the proper lot and a neighbor's building may encroach. Of course the title to so much as is not encroached upon is marketable, but it may be a grave question of whether the encroachment does not affect the marketability of the lot as a whole. This is not so much a question of law as of commercial utility, and the courts so consider it. If the court find that the encroachment does not substantially lessen the value and extent of the property, it will compel a purchaser to accept it. If the encroachment does substantially lessen the value and extent of the land, the purchaser may refuse to take it, or he may take it, and be given an allowance for the land lost by the encroachment.

**Survey in building operations.**—It is always important that a new structure be built upon its own lot, and particular care should be taken when the plans call for a building to run along the lot line. A surveyor should be employed who will locate the lot lines and mark the corners. The builder should then keep within the lines indicated. It is wise to have the surveyor survey the property from time to time as the work progresses in order to guard against encroachments by careless building, such as leaning or bulging walls.

**Survey in land developments.**—The surveyor is always used in land development operations. He surveys the tract, locating and marking by monuments or stakes the streets and blocks. The blocks are usually laid out of such size as to be easily subdivided into lots. A map is then prepared showing all the streets, blocks and lots. As the lots are sold it is a simple matter for each purchaser to locate his lot.

## CHAPTER X

### CLOSING OF TITLE

**When title passes.**—Title to property passes when the instrument of conveyance is delivered. This is not necessarily the date of execution. The instrument may have been signed long before the day of delivery but no title is passed until delivery. In the absence of proof to the contrary, however, the law presumes an instrument to have been delivered on the day it is executed. To make a legal delivery, the grantor must have been legally competent not only at the time of execution but also of delivery; that is he must have been of legal age and of sufficient understanding to make a contract. The delivery must be voluntary and intentional. An owner having executed a deed of his property might retain it forever and no title would pass. If the deed were stolen from him the thief would obtain no rights under it. A deed recorded after the grantor's death is always open to question, upon the suspicion that it may not have been delivered by the grantor.

**Delivery in escrow.**—Occasionally it is found convenient to make a conditional delivery of the deed. For example, the seller is not ready at the closing to submit proof that he has paid a certain lien upon the property and it would be inconvenient to call all the parties together again. In that event the deed may be delivered "in escrow" to a third person who acts as agent for both seller and purchaser and who is authorized to deliver the deed upon receiving proof of payment of the lien. The terms of the agreement under which the delivery is made should be very carefully drawn specifying exactly the conditions to be met before final delivery and should be signed by the seller and purchaser.

From the moment however that the instrument is legally delivered, the grantor's rights cease, and the purchaser becomes from that instant entitled to all rights conveyed by the instrument.

**The title closing.**—The contract of sale or exchange designates a certain day and hour when, and place where the deed

shall be delivered and the balance of the price shall be paid. This transaction between the seller and purchaser and their respective representatives is known as the "title closing" or "closing of title." The closing is the consummation of the contract, and must be in exact accord with its provisions. Hence it is absolutely necessary that a copy of the contract be brought to the closing. The purchaser should have a report of title showing the name of the record owner and a statement of the encumbrances on the property. This report should be brought right down to the day of closing. He should also have money to pay the amount required by the contract, and since there are usually adjustments to be made and expenses to be paid, he should bring sufficient extra money to cover any such items. The seller should bring his latest receipts for taxes, water rates and interest on the mortgage (if there be one), also all insurance policies and receipts for payments on account of the principal of the mortgage, or agreement extending the time of its payment, if there be any. (Appendix forms 60 and 61.)

**Encumbrances subject to which the purchaser takes title.**—The report of title furnished by the examining counsel or the title company probably sets forth several encumbrances. Some of these, it is provided in the contract, shall remain upon the property. They should be carefully scrutinized to see that they are not other or more extensive than the contract provides. If the report of title shows a mortgage, care should be taken to see that the amount unpaid on the mortgage, its due date, interest rate and interest payment dates are in accordance with the terms of the contract. If the contract provides for different amount or terms of the mortgage, the purchaser should insist upon the delivery to him of a written statement from the holder of the mortgage, executed and proven so that it may be recorded, stating that the amount or terms of the mortgage have been changed and are now as the contract specifies. If such statement be not delivered the purchaser is entitled to an opportunity to make inquiry of the holder of the mortgage.

The purchaser is interested in the property in one of three ways; for an investment, for his own use, or for demolition to make room for a new structure. In any case the rights of the tenants are of great importance. If the property is

bought as an investment it is necessary to know what the rent return is. If it is acquired for the purchaser's own use or for demolition, the length of the tenants' terms of occupancy will determine how soon possession may be obtained or the building torn down. For these reasons all leases of record should be carefully examined to see that they are exactly as provided for in the contract, as to amount of rent, date it is payable, expiration of tenacy and all other details. The purchaser should detect any provisions in the leases for renewal, rebate of rent, special repair or other unusual clauses. The purchaser, for further security, would do well to go to the property, before the closing, and interview the tenants, finding out what each claims as his rights in the property.

All restrictive or other covenants shown upon the report of title should be examined carefully. They might be of such nature as to materially affect the use of the property. If a survey has been obtained by the purchaser, he should scrutinize it to see if the building violates any restrictive covenants which are upon the property. The survey will also show any physical conditions of the structures which may affect the title. Any covenants or survey variations not agreed upon in the contract may be waived by the purchaser if he deems them unimportant. If however, they materially lessen the value of the property the purchaser is justified in refusing to take title.

**Encumbrances to be removed.**—All encumbrances shown upon the report of title, other than those waived by the purchaser or which the contract provides are to remain, must be removed. This it is the seller's duty to do. He must deliver a title free and clear of all encumbrances except such as are, by the contract, specifically excepted. Customarily the purchaser, as soon as he receives his report of title, notifies the seller of all encumbrances which must be removed. The seller should come to the closing prepared to remove all such encumbrances. If it is a mortgage which is to be satisfied, he should have the holder present with a satisfaction piece ready for delivery. The same arrangement may be made with reference to a judgment which is a lien. Often for convenience the mortgagee or holder of the judgment gives a statement of the amount due him, and the purchaser or his attorney holds out that amount from the price, going to him after the closing, paying the amount stated and receiving the satisfaction piece. If a title company closer is closing the title, it is customary

for him to hold the money for this purpose and secure the satisfaction piece. Very often the property is subject to the lien of unpaid taxes. It is usual then for the purchaser or his representative to hold out an amount sufficient to pay them. They are later paid by him and any surplus returned to the seller.

**Instruments to be delivered.**—The contract provides for the delivery of certain instruments. If a sale, there is a deed and often a bond and purchase money mortgage. These should be carefully examined to see that they are in accord with the contract; the deed that it conveys the proper estate, sufficiently describes the property and is in the form provided in the contract; the bond and mortgage that they are for the agreed amount and upon the terms set forth in the contract. They should then be signed and acknowledged and finally scrutinized to see that the execution is proper. It is usual also to have the seller execute what is known as an "affidavit of title," by which he swears to the fact that he owns the property, states how long he has owned it, that no one has made any claim to it, that his title has never been questioned, that there are no liens upon it except such as are specifically mentioned and that there are no judgments against him.

**Adjustments.**—Upon the title being closed the seller's rights cease and the purchaser at once becomes entitled to every interest in the property. It is not practicable for the seller to settle and pay all his accounts respecting the property; it is much more convenient to adjust between seller and buyer such items as rents, insurance premiums and mortgage interest. The contract usually provides for an adjustment of those items and may include others. Customarily the adjustment is made as of the date of closing title, but the contract may set another date.

The adjustments are made in the form of a debit and credit account; the credit column containing all the items for which the seller is entitled to credit, and the debit column all items for which the purchaser is entitled to credit. For an illustration: suppose the property were being sold for \$20,000; \$1,000 paid on signing contract; \$4,000 to be paid on closing; the purchaser to take title subject to an existing mortgage of \$10,000 with interest at 5 per cent per annum, payable semi-annually, the last interest having come due and been paid two

months before the closing of title; the balance of the price, to be paid by a bond and purchase money mortgage for \$5,000. The property is rented to a tenant who pays \$200 per month rent in advance, and whose rent was due and paid on the first of the month in which title is closed on the 15th. There is a fire insurance policy upon the property for three years; premium \$36 which was issued 14 months prior to the closing of title.

In this illustration the first credit is the total selling price: \$20,000. The next credit is for unexpired insurance. The policy was paid for in advance by the seller and has, at the time of closing 22 months still to run. If the seller cancelled the policy, he would receive a refund from the insurance company of less than the unexpired value, computed on a pro-rate basis. Hence the contract provision for an adjustment of this item. The premium being at the rate of \$1 per month entitles the seller to a credit of \$22 for the unexpired term of the policy. Another credit to which the seller is sometimes entitled arises in case of a postponement of the closing at the purchaser's request. In such events the postponement is often conditioned upon the purchaser paying interest on the purchase price from the original date set for closing; the amount of interest would then be placed in the column of seller's credits.

The purchaser's first credit is the amount paid on signing of the contract: \$1,000. Next he receives credit for the amount of the existing mortgage: \$10,000. Two months' interest on the mortgage has accrued up to the date of closing and since the interest is payable semi-annually there will be a full six months of interest due four months after closing, which the purchaser, being then the owner, will have to pay. So he deducts the seller's share of the interest from the purchase price by crediting himself with one-third of the sum of \$250 the interest for six months: \$83.33. The bond and purchase money mortgage for \$5,000 being given for part of the price entitles the purchaser to a credit for that amount. The final credit he receives has to do with the rent. The tenant has paid the seller \$200, rent for the month. Title being closed in the middle of the month, the seller should turn over to the purchaser one-half of this amount. This is accomplished by the purchaser taking a credit for \$100.

The adjustments as finally computed would appear as follows:

	<i>Dr.</i>	<i>Cr.</i>
Total price .....		\$20,000.00
Paid on contract.....	\$ 1,000.00	
Existing mortgage .....	10,000.00	
Interest at 5 per cent for 2 months.....	83.33	
Purchase money mortgage.....	5,000.00	
Insurance adjustment .....		22.00
Rent one-half month.....	100.00	
Total debits .....	\$16,183.33	
Total credits .....		\$20,022.00
		16,183.33
Balance due from purchaser.....		\$3,838.67

The purchaser therefore after the adjustments are made owes and must pay to complete the transaction, the sum of \$3,838.67. It is probable that the contract in the illustrated case provided that the purchaser should pay for drawing the bond and purchase money mortgage, the recording fee, recording tax (if any) and for revenue stamps on the bond. The purchaser will be required to pay an additional sum to cover these items. Should there be any taxes a lien upon the property, the purchaser, since he desires to be certain they are paid, will usually deduct their amount from the balance he owes, and pay them himself. In the same way the purchaser would deduct an amount sufficient to cover any mortgage or judgment which is to be satisfied.

It is customary to compute time upon a basis of a 360 day year and 30 day month, unless a considerable sum is involved, in which case often the exact number of days is used. In counting the number of days in a certain period, the first day is excluded and the last day added. For example, To figure interest for a period of days, the amount due for one month is divided by 30 and multiplied by the number of days. The period from February 1st to March 15th would be figured as 1 month and 14 days. Interest unless otherwise specified is figured at the maximum legal rate.

It is usual to incorporate the statement of adjustments into a "Statement of closing of title." (Appendix form 66.)

This contains, in addition to the memorandum of adjustments, a notation of the date of closing, and place, the names of those present and the details of all instruments delivered. It is valuable for future reference in event of dispute. When the title is examined by a title company, and closed by its representative, he usually prepares the closing statement.

**Closing exchanges, leaseholds and loans.**—The statement of adjustments in the closing of an exchange is similar to that in a sale except that there are a double set of debit and credit items. Each party is charged with the price of the property he receives. Each is credited with the amount of mortgage, accrued interest and rent adjustment upon the property he receives. Sometimes if there be a difference in the agreed value of the properties, instead of charging each with the price of the property he receives, merely the difference is stated as a charge against the proper party. If there is no difference in the agreed price, they need not be stated in the adjustments.

In closing sales of leaseholds, the purchaser is not buying the land but only the lease. He should therefore examine carefully the terms of the lease which he is purchasing and know exactly the claims and rights of sub-tenants, if there be any. The items to be adjusted will consist usually of the ground rent paid to the owner of the land and rents paid by sub-tenants. The seller is entitled to credit pro rata for ground rent he has paid in advance or should be charged in the same manner if there be ground rent accrued and unpaid. The purchaser should be credited with his proportion of sub-tenant's rent paid in advance and also any deposits they may have paid as security.

Upon the closing of mortgage loans there are practically no adjustments to be made. The borrower pays all expenses, including examination of title, preparation of bond and mortgage and recording fees. The lender simply advances the amount of the loan. The bond and mortgage should be carefully examined to see that they are in accordance with the terms agreed upon, and that they are properly executed.

**Rejection of title.**—If the seller is unable to deliver a title substantially such as he agreed to give in his contract, the purchaser may reject the title. He is then entitled to the return of the deposit he paid on the signing of the contract, together with interest at the legal rate from the time he made the pay-



ment to the time it is repaid to him. He is entitled also to be compensated for such reasonable expense as he may have incurred in the examination of the title. He can recover as damages a lost profit on the transaction only in case the seller was guilty of a fraud or should have known the title was defective. The purchaser's remedies are more fully discussed at page 60.

## CHAPTER XI

### LEASES

**Landlord and tenant.**—Persons or corporations owning real property permit others to hire it and charge them for its use, the object of the owner being usually to derive an income or profit from the property. Out of the agreement between the parties grows the relationship of landlord and tenant. The landlord is the one letting the property, the other hiring it and agreeing to pay rent, being known as the tenant. The landlord is usually the owner of the property but not necessarily; he may himself be the tenant of the owner, letting the premises to his own sub-tenants.

**Leases.**—The agreement under which the tenant hires the property from the landlord is known as the lease. It is the agreement under which the tenant goes into possession and specifies how long the possession shall continue and the amount which shall be paid the landlord for the use of the property. The time for which the tenant may hold possession is known as the "term." The amount reserved to the landlord is known as "rent." A lease may be merely a verbal letting agreement for a short term, or it may be a lengthy document containing many special provisions and covenants.

**Rent.**—Rent has been defined as a definite periodical return for the use of land. It may be payable in money, or it may be payable in the produce of the land. The amount of rent need not be definitely fixed in advance but it must be capable of being made definite at some time. For example, leases may be made having the rent fixed as a certain share of the crop to be raised on the land—when the crop is harvested the amount of rent is known. Store property is sometimes leased with a provision that the landlord shall receive a fixed sum of rent, plus a percentage of the tenants' gross receipts above an agreed amount. This additional sum is part of the rent, the total rent being determined when the results of the tenant's business is known.

Rent must also be periodical—that is, it is payable at regular recurring intervals, so much payable in one sum for the term, or so much each week, month or year of the term.

There is a danger in giving possession of property without establishing a tenancy. A purchaser of real estate who enters into possession of the property he is buying under a contract

of sale, and before delivery of the deed, is not a tenant, unless he is made so by express agreement. Because of the delay and expense of an eviction action, it is advisable to establish the nominal relationship of landlord and tenant in such cases. This is accomplished by a letting agreement between the parties in which the term and rental is specified. This may be a separate instrument, but is often contained as a special clause in the contract of sale. (Appendix form 12.)

Janitors are employees and often receive the use of an apartment as part of their wages. It is usually advisable to have the employee sign an agreement for the use of the apartment at a nominal rental. If he is ever discharged, the letting agreement can be terminated and possession of the apartment secured through a dispossess proceeding.

**Term of lease.**—There is no legal limitation upon the term of a lease.<sup>1</sup> It may be for one day, or it may be for 999 years. It is customary in New York State, however, to make long term leases run for a period of twenty-one years, with provision for one or more renewals at similar terms. The reason for this is that under the tax law of the State, the rent payable under leases for more than twenty-one years may be taxed as personal property to the one entitled to receive it, and this tax is in addition to the ordinary tax on the land. The object of this provision of the tax laws is to prevent the tying up of land on long leases.

Regardless of the length of the term, the right of the tenant to use the leased premises is personal property, his holding being a leasehold. The right of an owner to receive the rent and to resume possession at the end of the lease is real property.<sup>2</sup>

**Verbal and written leases.**—Under the Statute of Frauds in New York, leases for more than one year must be in writing and subscribed by the party to be charged. It follows then that leases for terms up to one year may be verbal. With regard to written leases, it is important that the agreement clearly express all of the terms of the lease as the writing will control over claims regarding a verbal understanding of any matter relating to the letting. Leases of three years or more may be recorded under the New York

<sup>1</sup> An exception to this in New York is that leases of agricultural lands shall be for periods not longer than twelve years (N. Y. State Constitution, Art. I, Sec. 13.)

<sup>2</sup> The provision of the New York State Tax law concerning taxation of rent received under leases for more than 21 years was repealed in 1923.

Statute. The laws of other States differ as to the length of time for which a verbal lease may be made and also as to the term of recordable leases.

Possession of real property is actual notice of the occupant's claim upon it, and for this reason the recording of a lease is not always important. Failure to find a lease on record is not conclusive evidence that the tenant's lease is a short one.

**Monthly tenancies.**—A monthly tenancy is one made for a month only. It is self-renewing, however, from month to month unless notice is given by the landlord to the tenant of his intention to terminate it. The tenant need give no notice but may remove at the end of any month. At one time in New York, the notice required to be given by a landlord was five days. This was later increased to twenty days and more recently to the present requirement of thirty days. After notice to quit has been given by a landlord the tenant who fails to remove is known as a hold-over tenant and a summary proceeding to recover possession can be brought against him.

In New York State, by a recent decision a distinction has been made between a *monthly* tenancy and a *month to month* tenancy. The latter has been held to be strictly a tenancy for the month only, but self-renewing unless notice to quit has been given. On the other hand, the *monthly* tenancy is considered to be one made for an indefinite period but calling for installments of rent payable monthly.

In States other than New York, it is a rule that notice to quit is coincident with the length of the period of tenancy and also that the requirement of notice is reciprocal.

**Indefinite tenancies.**—Many tenancies are made for indefinite periods and are known as tenancies at will. The tenant goes into possession under an agreement, usually verbal, to pay a certain rent periodically, but no term is stated. The agreement can be terminated upon one month's notice by either party. A tenancy by sufferance has also been recognized but this is usually only an express or implied license to use the property at the pleasure of the landlord.

**Tenancy for term of year or years.**—A tenancy more important than the monthly, and at-will tenancy, is one for a definite term of a year or longer. The necessity for having

such agreements in writing is governed by the statutes of the State in which the property is located.

The tenancy for a year ends without notice on the last day of the term of the lease. If the tenant continues in possession, he is a hold-over. The landlord can dispossess him as such, or he can elect to hold him for a further period of one year. The landlord may, however, give notice to a tenant that if he continues in possession, it is as a monthly tenant only. In the absence of a notification of this kind, the acceptance of rent by the landlord from a hold-over is usually construed as a renewal of the lease by the landlord for one year, and this is regardless of the number of years in the term of the original lease.

**Ground lease.**—A ground lease is one made for the rental of a parcel of unimproved land for a term of years. The agreement usually contains the provision that a building shall be erected on the land by the tenant. It frequently contains a further provision regarding the disposition of the building at the end of the term. The building although erected at the expense of the tenant legally becomes real property and is, therefore, unless otherwise provided, the property of the landlord, subject, however, to the tenant's right of possession for the term of the lease. In order that the tenant get back the cost of the building, the lease must provide that the landlord, at the expiration of the term, shall pay the tenant all or part of the cost or appraised value of the building, or in the absence of such a provision, the term of the lease or the renewal privileges, must give the tenant sufficient time to amortize the entire cost of the building during the period of his occupancy. Ground rent is often computed on the basis of a certain percentage of the value of the land. The tenant pays all taxes and other charges, the landlord's rent being net. In order that the landlord obtain the benefit of an increasing land value, it may be provided that with each renewal of the lease a re-appraisal of the land be made and the rent increased proportionately. It may be provided that at the end of a term, the landlord may either pay the tenant for the building, or renew the lease at his option. There are no set rules which govern leases of this kind, each bargain being consummated upon negotiations by the parties concerned. The provisions above mentioned are merely suggestive of what may be agreed upon.

The problem of the tenant erecting a building on leased ground is either to use it for himself, or to sub-let it to tenants, his own rent or the rent he obtains from sub-tenants being sufficient to make the operation profitable. He must figure that the building rent will cover the following items:

- (a) The ground rent payable to the owner.
- (b) Taxes of all kinds, and assessments for local improvements.
- (c) Premiums on policies of insurance against fire, liability, workmen's compensation and plate glass, charges for water, heat, light and power.
- (d) Labor and repairs, including all charges for upkeep and maintenance and service to tenants.
- (e) Interest on capital invested, that is, on the amount expended in erection of building.
- (f) An amount sufficient to amortize the cost of the building during the term of the lease or by the end of the last renewal of the lease.
- (g) A sufficient amount over and above all the foregoing charges to compensate the operator for his services and the risk involved in the enterprise.

In computing the rent expected to be realized from the building provision must be made for vacancies and losses through bad debts.

**Termination of leases.**—Leases may be terminated by any one of the following events:

- (a) Expiration of term of lease.
- (b) Surrender and acceptance, either express or implied.
- (c) Breach of conditions of the lease.
- (d) Constructive eviction of the tenant.
- (e) Exercise of right of eminent domain.
- (f) Destruction of property.

It has already been noted that leases for years end on the last day of their term without notice and that monthly tenancies and tenancies at will are self-renewing or continuing until notice of termination has been given. Prior to the end of the term of a lease the tenant may offer to surrender possession of the premises to the landlord and if such offer is accepted the lease is terminated. This may be done verbally even though the lease be written as the act of the landlord in taking possession shows that the obligations under the lease

have ended. If a lease has been recorded it is advisable to have the surrender agreement reduced to writing, signed, acknowledged and recorded.

The surrender of a lease and the acceptance of the surrender may be implied by the acts of the parties. The mere quitting or abandonment of the premises by the tenant and re-entry by the landlord, even though nothing be said, may be construed to be such an implication. To avoid the danger of the landlord accepting a surrender against his will or intention, it is advisable to have the lease so drawn that the landlord may, to protect the property, re-enter as the agent of the tenant.

A breach of conditions may terminate the lease. The conditions of a lease may be divided into two classes, those for which the landlord can dispossess the tenant by summary proceeding and those for which he cannot bring summary proceedings.

Summary or dispossession proceedings can only be brought for (a) non-payment of rent, (b) holding over at end of the term, (c) for unlawful use of the premises, (d) for non-payment of taxes and assessments when under the terms of the lease the tenant undertook to pay them, (e) when the tenant takes the benefit of an insolvent act or is adjudged a bankrupt, provided his lease was made for a term of three years or less. For breach of other conditions of a lease possession can be obtained only by means of a lengthy and expensive ejectment action. An important lease, however, if properly drawn, will contain provisions which will bring every condition and covenant into the class for which summary dispossession may be obtained. (Appendix form 69.) It will provide that additional charges, such as taxes, insurance premiums, water charges, expenses of repairs and alterations; in fact anything for which settlement is made in money, and for which the tenant is liable, may be paid by the landlord and the sum so paid become additional rent. The lease will also provide that the term is conditioned upon performance of the covenants and conditions on the part of the tenant and this provision will give the landlord the right to notify the tenant that he elects to end the term of the lease at a fixed time. In other words, there is a "conditional limitation" on the term. The failure of the tenant to pay the charges which have become additional rent, or the holding over of the tenant

after termination under the landlord's option because of breach of conditions, permits the landlord to obtain possession through the ordinary dispossession proceeding.

Constructive eviction occurs when the leased premises become in such a physical condition, due to some act or omission of the landlord, that the tenant is unable to occupy them for the purpose intended. No claim of constructive eviction will be allowed unless the tenant actually removes from the premises. If he so removes and can prove his case, the lease is terminated. He may also be able to recover damages for the landlord's breach of the covenant of quiet enjoyment.

There may be eviction of this kind from a portion of the premises only, but as a lease is an entire contract, the tenant can take advantage of this and remove from the entire premises, or he can retain possession of the remainder and refuse to pay rent until restored to possession of the entire premises.

The tenant's contention of constructive eviction must rest upon some act or omission of the landlord by which the tenant was deprived of the use of the property for the purpose or in the manner contemplated by the lease. The erection by the landlord of a building on adjoining property as a result of which the tenant's light was diminished would not be constructive eviction, but the storage of materials on the sidewalk in front of the tenant's premises for a period of time may interfere with his use of the premises to such an extent that constructive eviction could be proved. Failure of the landlord to furnish steam heat or other facility contemplated by the lease usually amounts to constructive eviction.

When leased property is taken for public purposes under the right of eminent domain, leases on it terminate. The tenant is given an opportunity to prove the value of the unexpired term of his lease in the proceeding under which the property is taken and may receive an award for it.

While under the common law the destruction of a building by fire or otherwise would not terminate a lease, nor relieve the tenant of his liability to pay rent, practically all of the States have passed laws which provide that in case of the destruction of the entire property, the tenant may remove immediately after the destruction and the lease is thereupon terminated.

**Dispossession proceedings.**—The right to recover possession from a tenant through the summary proceeding known as



dispossess is one given by statute and is not a common law right. The action is brought in courts, of minor jurisdiction, that is to say, courts of justices of the peace in country districts and city or municipal courts in cities. A petition is prepared reciting the tenancy and setting forth the cause of action and praying the court for a warrant of dispossess. The tenant must be notified, either personally or through some member of his family, or by posting the notice on the leased premises. There is a return day at which time the tenant may appear and answer. The court may not grant the petition—it may give judgment to the tenant. If the tenant does not answer, or if the court decides against him, judgment is given to the landlord and a warrant of dispossess is issued immediately. As a matter of compassion the court may stay the warrant for a short time and in a case of distress, such as serious illness in the tenant's family, there can be little objection to a reasonable delay. The tenant who does not peaceably remove after the warrant has been issued, may, with his belongings, forcibly be removed by a marshal or other public official.

**Emergency rent laws.**—The three causes for which dispossess may be principally granted have already been stated. They are non-payment of rent, holding-over at end of term and unlawful use of the premises. In New York and certain other jurisdictions, the right of dispossess was recently greatly abridged because of circumstances which the legislature has deemed to "constitute an emergency." The emergency came about through lack of construction of buildings for housing purposes during the period of the World War. Inasmuch as public interests are superior to the interests of the owners of such buildings, the legislature felt it necessary to guard against wholesale evictions by landlords of premises occupied for dwelling purposes. A summary of the most important of these New York laws is as follows:

1. Recovery from hold-over tenants of premises occupied for dwelling purposes is prevented except in the following cases:

- (a) Tenant is objectionable.
- (b) When premises are required for immediate use by owner or his family.
- (c) When building is to be demolished to erect new building and plans for new building have been filed and approved.

(d) When individual stockholder in co-operative apartment plan requires possession for his own use. Entire stock of corporation must be owned by persons who are to occupy portions of the building.

2. Prevent recovery of possession for non-payment of rent if the amount of rent is unjust and unreasonable and if the agreement under which recovery is sought is oppressive.

The landlord may recover a fair and reasonable rent but is required to file a bill of particulars showing income, expenses, assessed valuation, the consideration paid for the property and the encumbrances, and such other facts he may claim affect the net income. By amendment, the law provides that the tenant cannot plead unreasonableness if he has paid rent under the agreement for three successive months. He is also required to deposit the monthly rent with the clerk of the court during the pendency of the action.

3. It has been made a misdemeanor not to furnish hot or cold water, heat, light, power, elevator, telephone or other service when the terms of the lease, expressed or implied required that such facilities be furnished.

4. The provisions as to premises used for dwelling purposes do not apply to hotels, rooming or lodging-houses.

**Form of lease.**—The essential parts of a lease are the premises, term, amount of rent and manner of payment, and the covenants and conditions agreed upon. The agreement is made between two or more parties known as lessor and lessee (or landlord and tenant). A written lease will usually be dated and signed by both parties. Seals, witnessing and acknowledgments are sometimes added. There are a number of lease forms in general use. These forms vary from the very short monthly letting agreement to the lengthy agreement drawn to contain provisions for an important long-term lease. There is no one form that will fit every case—a lease must be drawn so that it expresses the intended agreement between landlord and tenant. Reference to the forms in the appendix will, however, illustrate some conditions that have been found of value.

**Repairs.**—The general rule is that neither party to a lease is required to make repairs, but the tenant is required to surrender the premises at the expiration of the term in as good a condition as they were in at the commencement of the lease, reasonable wear and tear and damage by the elements

excepted. Occasionally the lease provides that the landlord shall make certain repairs only. There is no legal requirement that the landlord make the ordinary repairs for the up-keep of the property except that the building must be kept tenantable. If a building becomes untenable the tenant may remove on the ground that he has been constructively evicted. Destruction of the building usually terminates the lease, neither party being obliged to rebuild, unless the lease provides otherwise.

**Improvements.**—All improvements become the property of the landlord when made. It is proper in some cases to provide that some or all improvements may be removed at or prior to the expiration of the lease. Fixtures and machinery installed by the tenant are usually considered personal property and are removable when the tenant removes. The lease usually provides that no alterations to the building shall be made without the consent of the landlord.

**Liens.**—The tenant may make repairs, alterations or improvements to the premises with the consent of the landlord. The landlord should guard against the contingency of the tenant neglecting to pay for the work so performed, and the consequent filing of mechanic's liens by those who did the work. The law permits the mechanics and material men under such circumstances to enforce their lien against the landlord's property, although they may not be able to hold the landlord personally. Where work of this kind is contemplated, the lease should provide that if such a lien is filed the landlord may pay it and add it to the next installment of rent becoming due under the lease. This may result in a dispossession of the tenant for non-payment of rent unless he reimburses the landlord for the amount he has paid to free his property from the lien.

The landlord may demand further protection from liens by requiring that the tenant deposit cash or file a bond as a guarantee that the cost of the repair or construction work will be paid. This is of especial importance in leases which provide that the tenant is to make any extensive repairs, alterations or improvements.

**Security furnished by tenant.**—A landlord when making an important lease may properly require that the tenant furnish security for the performance of the terms of the lease. This security may be in the form of cash or negotiable securi-

ties or it may be in the form of a bond executed by personal sureties or a surety company. There is no rule as to the amount of the security, but it is usually in proportion to the amount of rent reserved by the lease. The security may be a sum equal to the rent for one month or several months, or even a year or more. It is often agreed that the tenant shall receive interest at a certain rate on cash security deposited by him.

**Additional charges paid by tenant.**—The lease may provide that not only shall the tenant pay the landlord an agreed rental, but also that he shall pay some or all of the expenses and carrying charges of the property. In cases where the tenant pays all expenses and charges, the rent paid to the landlord is said to be a “net rental.” That is, the landlord’s income from the rent of the property is net to him, the tenant meeting all charges in connection with the property. These charges may include taxes, assessments, water rates, fire and plate glass insurance premiums. Interest on mortgages is not usually included among the charges to be paid by a tenant.

It should be a part of the agreement that the landlord may pay any or all of such charges that the tenant fails to pay and that any charge so paid becomes additional rent payable with the next installment of rent under the lease.

**Fire clause.**—The long form of lease given in the appendix provides that the tenant shall give the landlord immediate notice of any fire. It is then the landlord’s duty to repair the damage as speedily as possible. If the tenant remains in possession, the rent continues regardless of the fire, but if the damage is such that the tenant is compelled to remove, the rent ceases until such time as the property is restored to its former condition. In cases of total destruction of the property by fire, the lease is terminated; rent is paid up to the date of the fire and thereafter the liability of the parties ceases. It is advisable to include a fire clause in the lease so that the rights of the parties on the happening of such an event are clearly defined. In some States the law provides that a fire which renders the premises untenable terminates the lease. If there is no such provision of law or if the law provides the contrary, the lease of the premises continues regardless of any damage by fire.

**Assignment and mortgaging of lease and sub-lettings.**—The tenant’s rights under a lease being personal property

are assignable, unless the lease itself contains a covenant forbidding its assignment. A landlord often makes a lease relying on the financial stability of the tenant, or because the tenant is personally acceptable to him, and it is often, therefore, his desire to prevent an assignment of the lease to another person. A landlord may in any event consent to a proposed assignment if he wishes to do so.

It has been a rule that when a lease has once been assigned, with the landlord's express or implied consent or ratification, that it is thereafter freely assignable. To prevent this, it is well to provide that the landlord's failure to insist upon a strict performance of the terms and conditions of the lease shall not be a waiver of his rights as to any future breach of the conditions. The lease should also provide that an assignment (even with landlord's consent) shall not relieve the original lessee of his liability to pay rent, except that he shall be credited with any rent collected by the landlord from the assignee.

The usual rule regarding assignments is that the original lessee can be held personally for the rent called for by the lease even though he has assigned it and the assignee is in possession. Of course, the owner of the property may waive this by express or implied agreement, but unless such agreement can be shown the liability continues. The assignee of the lease in order to retain possession would, of course, have to pay the rent and comply with the other terms of the lease. His failure to pay the rent would permit the landlord to dispossess him. If the landlord wishes to sue for the rent due him his suit against the assignee would be to recover rent based on use and occupation, unless the assignee had made some binding agreement to pay the rent called for by the lease. Rent based on use and occupation may be the same rent that the lease calls for but not necessarily so.

A sub-letting is a letting of premises by a tenant to an under-tenant. It may be for all or part of the premises or for the whole term or part of it. Many leases provide that there shall be no sub-letting without the consent of the lessor. This covenant is valuable if the landlord wishes to control the character of the occupancy.

The tenant may mortgage the lease, that is the leasehold (the tenant's rights under the lease) may be given as security for money borrowed by him, unless the lease restricts him

from so doing. In New York, a mortgage on a lease is a conveyance and comes under the provisions of the recording act and is, therefore, recorded in the same manner as a mortgage on real property and not as a chattel mortgage. In some jurisdictions it is considered to be a chattel mortgage. In the absence of a statute or legal decision in any particular State it may be considered advisable to file it both ways.

**Use of the premises.**—Unless the lease contains a restriction, the tenant may use the premises in any legal manner. In his use of the premises he may not, however, interfere with occupants of other parts of the building. Illegal use would permit an action for dispossession by the landlord and a lease specifically made for an illegal purpose would not be enforceable by either party. The purpose for which the premises are to be used is often stated in the lease, as for example, "private dwelling," "boarding-house," "retail drug-store," etc. In this connection, where it is desired to limit the use of the property to some specified purpose it is well to have the lease state that the premises shall be used for the purpose mentioned, *and no other*. It was held that where the lease simply stated that the tenant was to use the premises for a certain trade that when that had been done he could use it for other trades. The lease may contain a covenant that the premises may not be used for any purpose extra hazardous, or objectionable, or detrimental to the neighborhood, or a provision of similar import.

**Compliance with orders of governmental authorities.**—Under the police power of the State, laws have been enacted governing and controlling the use, occupancy and condition of real property. These laws are enforced through various departments and bureaus. It is appropriate to provide in certain leases that the tenant will, at his own expense, comply with the orders issued by these authorities. The importance of such a provision in a lease depends on the use for which the premises are leased to the tenant and the extent to which control passes to the tenant. As an example, it may be noted that in the case of a factory building leased to one tenant, it should usually be a condition that elevators, stairways and fire-escapes be kept in a safe condition and that the provisions of the labor department, health department, fire department and building department be complied with by the tenant.

**Guarantors and sureties.**—The landlord may require and

the tenant give a guarantee by a third party of the faithful performance of the terms of the lease by the tenant. The agreement of guaranty must be in writing and signed by the guarantor. (Appendix form 70.) It may be a separate instrument but is often endorsed upon the lease. The guaranty may also be in the form of a bond executed by personal sureties or a surety company.

**Tenant liable after re-entry.**—It is frequently desirable to include in a lease provisions to the effect that if a tenant is dispossessed by summary proceedings, or if the tenant abandons the property and the landlord re-enters and takes possession, the landlord has the option of holding the tenant liable for the rent until the end of the term of the lease. The landlord may re-let the premises as the agent of the tenant, and in such event he credits the tenant with the amount he collects from the person to whom the property is re-let. A clause of this kind prevents absolute termination of the lease by a summary proceeding or the landlord's re-entry.

**Right of redemption.**—In some states there is a provision of law that where a tenant is dispossessed and the lease that he held had a period of more than five years unexpired, that he has a right to come in at any time after the dispossession and pay up all arrears, and again obtain possession of the property. That is to say, he has a right of redemption. In the long form of lease given in the appendix the tenant specifically waives this right of redemption. The advantage of such a clause is that it enables the landlord to be rid of a tenant who does not promptly meet his obligations and he may then proceed to obtain another tenant without fear of the first tenant coming in and claiming the right of redemption.

**Tenant to indemnify landlord for damages.**—It is proper to provide in a lease that the tenant shall hold the landlord harmless from all claims for damages to both person and property of every kind and nature. This clause tends to relieve the landlord of claims that may be made because of accidents to persons having access to the property or passing on the street adjacent thereto.

The responsibility for injuries received upon the premises often falls either upon the landlord or the tenant. The general rule is that he who has the custody and control of that part of the premises where the accident occurs is liable to damages for the injuries resulting. Consequently the tenant of

an entire building, having control and possession of the entire building, is responsible for any injury caused by a negligent condition of the building. As to apartment houses or other buildings in which there are several tenants, it is usually the case that each tenant has custody and control of his own apartment or space in the building, while the landlord retains the custody and control of those parts of the building which are used in common by the tenants, namely, the roof, halls, stairways and entrance. In such a building, therefore, the tenants would be responsible only for injuries arising from negligence in their apartments, while the landlord would be liable for injuries sustained upon roof, halls, stairways or entry. It must be borne in mind, of course, that neither the landlord nor tenant is liable for an injury caused by a negligent condition existing in the building unless he either actually knew or should have known of the condition. Also, neither the landlord nor the tenant is responsible for an accident unless it was caused by negligence on the part of either of them. In most States, an exception to the above rules exists under which the landlord may be responsible for some accidents in a building even if a tenant has possession and control of the entire building. Such would be an injury arising from a negligent condition which existed at the time the landlord leased the property to the tenant. For example, a tenant is in possession and control of a one-family dwelling house. The stair carpet installed by the tenant becomes worn and causes a visitor to trip, fall and injure himself. In that case the tenant would be responsible for the damages sustained. Suppose, however, that the staircase was so erected as to be very steep and the treads very narrow so that it would be dangerous to anyone going up or down the stairs. In that event a person falling upon the stairs would have a claim against the landlord rather than the tenant. In other words, if there is some inherent defect in the property at the time of the creation of the lease, the landlord would be liable for any injury caused by that inherent defect. It is also true that if the landlord rented the property for a dangerous or illegal purpose he would be liable for damages.

In certain cases both the landlord and the tenant would be liable for damages, as when the landlord created a nuisance and the tenant continued it. In one recorded case, the landlord of a building installed a sink without an overflow pipe.



The tenant allowed the water to overflow from the sink with the result that the property of a tenant in a lower apartment was damaged. The injured party was allowed to hold both the landlord and the tenant for the damages.

**Leases subordinate to mortgages.**—A lease of property is subject to mortgages and other liens upon the property of record when the lease is made; that is, such liens would be superior to the rights of the tenant. When the lease is made the tenant usually takes possession of the property. He may also record his lease. Either would give notice to persons thereafter dealing with the property of the rights of the tenant and a mortgage made after the lease would therefore be subordinate to the lease. It would seem to be important, therefore, that tenants who propose to erect a building or spend money in considerable amounts on the property, should inquire into existing mortgages. It is also important for mortgagees to find out about existing leases. Leases may be an advantage to the property, rather than a disadvantage, the amount of rent and length of time called for by the lease being the determining factors. A case is on record where a bank loaned \$82,000 on a piece of property, ignoring the rights of the people in possession. The mortgage was afterwards foreclosed and it was then found that the property was occupied by tenants having a ten-year lease with an option of a further renewal of ten years at an annual rental of \$6,000. It is evident that a rent of \$6,000 was entirely inadequate for a piece of property costing a mortgagee in excess of \$82,000 and the lease was especially disadvantageous in that it had a long time to run at the low rental.

Leases often provide that they shall be subordinate to mortgages up to a certain amount and this provision may permit the landlord to increase existing mortgages up to the agreed amount. The provision of the lease should be that the tenant will execute necessary agreements to effect such subordination.

**Covenants by landlord.**—The covenant in the lease specifically made by a landlord is that of quiet enjoyment. There are implied covenants of possession and sometimes fitness for use. There is usually no warranty, as to the lease of a whole house, of habitability nor suitability. However if a landlord leases an apartment in a house, or an office in an office building, there is an implied covenant that the portions of the building

used by all of the tenants are fit for the use for which they are intended. The implied covenant of possession is that the tenant can hold possession against everyone including the landlord. Of course, the landlord is usually allowed under the terms of the lease the right to show the property to another tenant or a purchaser for a short period before the expiration of the lease, and the lease also usually gives him the right to enter and make necessary repairs or comply with the requirements of governmental authorities. The important point for the tenant is that it is incumbent upon the landlord to accord him possession for the term of the lease subject only to its conditions.

## CHAPTER XII

### BROKERAGE

**Definition of a broker.**—Real estate brokers are those who negotiate between the buyer and seller of real property, either finding a purchaser for one desirous to sell, or vice versa; they also manage estates, lease or let property, collect rents, and negotiate loans on bonds and mortgages.<sup>1</sup> A real estate broker has also been defined as one who makes a bargain for another and receives a commission for so doing.<sup>2</sup> The real estate broker is usually considered as an agent acting for one of the parties to a transaction, although in some cases he may have merely the character of a middleman in bringing the parties together. The person represented by the broker is the principal, he may be known as owner or purchaser, vendor or vendee, buyer or seller, lender or borrower, lessor or lessee.

**Compensation of brokers.**—The compensation paid a real estate agent or broker is called commission or brokerage. He is not paid a salary, for if he receives a salary from his employer he is a salesman, not a broker. The amount of commission or brokerage is commensurate with the size of the transaction, that is, the amount of money involved. There is usually a rate of commission agreed upon or fixed by the custom of the business. Each transaction is paid for separately, so that the earnings of the broker are dependent upon his success in bringing about transactions.

**Qualifications of a broker.**—A broker to be successful must possess the qualifications of a salesman. His salesmanship should be of the highest type, as he is dealing with a valuable commodity and there are often long and difficult negotiations. He is a salesman not only in bringing about sales and exchanges of real estate, but also in effecting leases and securing mortgage loans. The loan broker, for example, seeks to present a loan to a lender in such a manner as to make it attractive. He should be familiar with the property which

<sup>1</sup> 4 Am. & Eng. Ency. of Law (2nd Ed.) 962.

<sup>2</sup> Potts vs. Turner, 6 Bing. 702, 706.

is the subject of the application, know all of the features which make it valuable and which add to its desirability as security for a loan and be able to convince the lender regarding them.

The rights and duties of a broker in relation to his principal and others have been defined in numerous legal decisions. In this chapter, the broker is considered with reference to these rights and duties. His business is also briefly described.

**The broker's business.**—The ordinary real estate broker does a general business. His office is open to every transaction pertaining to real estate. He brings about purchases and sales, exchanges, rentals, mortgage loans; he also collects rents and places fire insurance. Some brokers make a specialty of certain branches of the business. They may work on real estate sales alone, or on placing loans, or on leases, sometimes leases of a particular class of property. Whether he does a general business, or specializes in a particular line, the legal rules applicable are the same and the essentials for success no different.

The broker should possess accurate information regarding the property he attempts to sell, rent, or mortgage. Some of the property is listed with him voluntarily, and some he goes out and obtains. In either case he should keep a record in which full details of the property are stated. The information should include

a. **Definite location.** This may be by street number, but the dimensions of the plot should also be stated. This is true also of property designated by lot numbers; the prospective purchaser may want to know the size of the property. If possible a diagram of the plot should be obtained.

b. **Description of improvements.** Size of the house, number of stories in height, number of rooms and baths, construction material, kind of heat and light, floors, trim and decorations, age of building and whether in good or poor repair, if for one or more families, and if apartment house the number of apartments and rooms in each.

c. **Price and terms of sale.** The amount of existing mortgages and the terms of them. The amount of cash required and whether owner will take part of price in a purchase money mortgage and if so its terms. The particulars of any tenancy, the length of the term and the rent.

The foregoing, and any additional information, may for the

sake of convenience and accessibility be recorded on a sheet or card ruled and printed for the purpose.<sup>3</sup>

Of course a broker should know whether the price asked by the owner is reasonable or not. His knowledge of other sales will help him to determine this. In renting property, he should be familiar with the rents being asked by other owners and brokers for similar space.

He should at all times be familiar with changing conditions, increasing or decreasing values, existing and proposed transit and all other things which affect or tend to affect values and rentals.

The broker, it may be repeated, is a salesman. Thorough familiarity with his stock of goods is a necessity. He will see to it that his office records are kept in such a manner as to be of the most value to him. The prospective purchaser with whom he deals may be a home-seeker, or an investor, or a builder. He must get him what he wants—he should present to him everything available. If he doesn't interest the purchaser some one else will. This may require the broker with a prospective buyer to seek the suitable property. He may have to look for a long time before finding the right parcel. When he locates it, he must obtain the price and terms and get the owner's agreement to pay him a commission for selling it.

**The mortgage loan broker.**—The mortgage loan broker must first of all obtain the application for a loan and then find a lender with whom to place it. This application should definitely state the amount of loan desired, the rate of interest the borrower is willing to pay, the number of years the mortgage is to run, the installments, if any, to be paid on the principal during the term, a diagram or description of the property offered as security for the loan, the particulars of the improvements on the property, the rents being received and the terms of the leases. It is well also to know the name of the bondsman as lenders frequently consider the bond offered in connection with a loan. The owner usually states the value he places upon the property. There should also be an agreement to pay the broker's commission if he succeeds in placing the loan, and if the authorization is exclusive for a specified period the broker will be better protected.<sup>4</sup>

<sup>3</sup> See Appendix, form 78.

<sup>4</sup> For a loan broker's blank see appendix, form 77.

**Management.**—Some brokers do a large business in the management of property for others. They collect the rent, order the repairs, hire and pay the employees and generally take the owner's place in running the building. They receive a percentage of the rents collected as compensation for their services.

**Essentials of success.**—The broker's own stock in trade is his brains, ability, resourcefulness, salesmanship, and the goodwill he builds up through having satisfied customers. The qualities for success are the same in the real estate business as in any other business. Faithful honest dealing is a requisite. As the circle of a broker's clients is increased, his business, and therefor his income grows.

Much time and effort may be put on a proposition by a broker only to have it produce no fruit. The deal may be almost made and then fall through. Disappointments are part of the "game" however, and brokers quickly forget them and take up another matter with hopes of more success. It is the part of wisdom for a broker to be reasonably sure that he is dealing with the principals or with their authorized representatives—also that there is nothing which will prevent the consummation of the transaction, such as restrictions on the property or incapacity of the owner. A knowledge of these things may save the broker useless effort and prevent a waste of valuable time.

**The broker's authority.**—In New York and other states, the broker's authority to negotiate a sale, exchange, or lease of real property need not be in writing. In New Jersey and some states however, the statute provides that unless the broker has written authority he cannot recover any commission for making a sale or exchange. There are some localities in which the broker must procure a license or pay a tax.

The ordinary authority of the broker is to conduct the negotiations only. Unless he is a mere middleman, he has a certain amount of discretion and actually represents his employer. His authority does not usually include the right to execute a contract of sale or purchase on behalf of his employer, but he may be given such right. Authority to execute a real estate contract can be given by parol in New York and in some other states. In Illinois, California and others, written authority to sign contracts is required. Although a broker may have signed a contract without any

authority to do so, the principal may, if he wishes, accept it and ratify the agent's act. A broker's authority to sign contracts may be inferred from circumstances or a course of dealing or the contract may be ratified by the conduct of the principal.

**May not act for both parties.**—The broker is usually the agent or representative of his principal. As such he owes it to his principal to give faithful, honest service. He should not allow personal considerations to interfere with his duty. "No man can serve two masters" is an age-old truth and applies to the real estate broker's relations with the principals to a transaction. A number of legal decisions hold that a broker, clothed with the slightest discretion, cannot secretly accept compensation from both parties.<sup>5</sup> The interests of purchaser and seller are adverse, and it is inconsistent with the proper performance of his duty to one employer that he act for and accept reward from another. It is a breach of his implied contract with each. His acting for both without disclosing the fact constitutes a fraud and precludes the recovery of commission.<sup>6</sup> It was held in one case that it was the *character* of the employment that determined the matter, and that where the broker was employed merely to bring the parties together, the terms being arranged between the parties when they met, it was not improper for him to accept a commission from both even though he failed to notify them of it.<sup>7</sup> Of course in any case, the broker can accept a double commission with the knowledge and consent of the parties.

**Sharing in profits.**—To act in the interests of his employer is clearly the duty of an agent. This means that on a real estate transaction, the broker should get the best price and terms for his principal. It is highly improper for him to be at the same time a broker and a purchaser. He can of course purchase the property if he acts openly in so doing and, if the owner understands it and agrees to it, he may even receive a commission. The usual rule however is that an agent cannot buy from nor sell to his principal while he acts as agent.<sup>8</sup> A broker may be authorized to sell at a net price

<sup>5</sup> See *Harten vs. Loffler*, 31 App. D. C. 368; *Roome vs. Robinson*, 99 App. Div. 143 (N. Y.)

<sup>6</sup> *Plotner vs. Chillson*, 95 Pac. 777; *Duryee vs. Lester*, 73 N. Y. 442; *Carman vs. Beach*, 63 N. Y. 97.

<sup>7</sup> *Knauss vs. Krueger Brewg. Co.*, 142 N. Y. 75.

with the understanding that he shall receive as compensation all he may obtain above that figure. If he is merely employed to sell, however, and the owner names a price, he is in duty bound to do better if he is able, and he cannot pretend to sell at such price when in reality he is getting more, and having a secret interest in the profit thus obtained. In a New York case a broker contracted to sell at a price of \$17,000. He advised his principal of this, but later receiving an offer of \$26,000 for the same property, he took an assignment of the first contract and then became the vendor under a second contract at the advanced price. He then had the seller deed directly to the second purchaser, received the \$26,000, but accounted to the seller for only \$17,000. The court held that the broker could not appropriate the difference between these amounts, but that his principal was entitled to the benefits of the second sale.<sup>9</sup>

The same rule applies to employees of the broker and also officers of a corporation. A trustee cannot be interested in the subject of the trust. The interest of the principal "must be his interest, and he can have no interest which, conflicting with those of his principal, can work injury to the latter."<sup>10</sup>

**Broker must be employed.**—In order that a broker may be able to recover commission for his services, it is necessary that there be a contract of employment with the one for whom he acts. As already noted, this need not be a written agreement except in those states where the law requires it. But, nevertheless, there must be employment, either express or implied, or the broker has no legal ground for his claim. *Volunteers* are not entitled to compensation, and a broker who performs a service without having it understood that he is to be paid for doing so, may find himself classed as a volunteer.<sup>11</sup>

A person who has merely inquired the owner's price for a piece of property, and procured a buyer at that price is not entitled to a commission. If he could, an owner could scarcely quote a price to anyone without laying himself open to a claim from someone for commission when he sold his property.

<sup>9</sup> *Gardner vs. Ogden*, 22 N. Y. 327; see also *Clark vs. Bird*, 66 App. Div. 284 (N. Y.), which quotes from *Story on Agency*.

<sup>10</sup> *Bain vs. Brown*, 56 N. Y. 285.

<sup>11</sup> *McDonald vs. Lord*, 26, How. Pr. 407.

<sup>12</sup> *Benedict vs. Pell*, 70 App. Div. 43 (N. Y.).



The courts have clearly settled this point and have stated that "an owner cannot be enticed into a liability for commissions against his will."<sup>12</sup>

It is of course more satisfactory if there is a written authorization stipulating the amount of the commission, for then the employment is easily proved. It is also a clear case of employment when the owner comes to the broker and lists his property with him. The owner, it is assumed, must know the broker expects to be paid a commission if he secures a customer. The amount of commission, in the absence of a definite agreement, would be such as is fixed by custom in the locality.

A contract of employment may be implied by the past dealings of the parties, or when it can be shown that the owner knew that he was dealing through a broker who expected to be paid for his services. Employment may be by ratification, as when an owner accepts the results of a broker's services with the plain intent to ratify.

When commission is earned.—A broker has earned his commission when he has accomplished that for which he was employed. If he was employed to sell, he must bring about a sale. He is not paid for making impressions, nor for interesting people in the property nor for an unsuccessful effort.<sup>13</sup> The rule which is supported by many judicial decisions is that the broker is entitled to commission when he produces a purchaser, ready, willing and able to purchase on the terms offered by the seller or terms which he is willing to accept. If a contract of sale has been signed the broker has the best evidence of the success of his work, and a purchaser truly answering the description of ready, willing and able would without question sign such a contract.<sup>14</sup> The principal may capriciously change his mind and refuse to make a contract of sale with the broker's customer. He of course does not have to sell, but he is liable to the broker for commission. The broker has performed the service for which he was employed even though no actual sale resulted. He should, however, be prepared to prove that his customer answered the required description.

The broker may make a special arrangement with his prin-

<sup>12</sup> 4 E. D. Smith 354.

<sup>13</sup> *Sibbold vs. Bethlehem Iron Co.*, 83 N. Y. 383.

<sup>14</sup> *Wilson vs. Mason*, 158 Ill. 310.

principal whereby he limits himself to recovery of commission only in the event of a sale being actually consummated by delivery of the deed and payment of the purchase price. Such arrangement to be binding upon the broker, must be made prior to the time he has earned his commission. If made after rendering the service for which he was employed it would probably not be enforceable by reason of lack of consideration. Any special agreement of this kind should contain a distinct provision that commission on the sale shall be due and payable only if and when the title passes to the purchaser. It should be remembered that the *ordinary* obligation of the broker is to bring the principals to an agreement so that there is "a meeting of the minds" as to the terms.

**Broker procuring cause of sale.**—It is an established rule that if an authorized broker is the "procuring cause" of a sale, he is entitled to his commission. He does not have to introduce the parties, nor bring them together personally. If through his efforts they get together and come to an agreement, he must be recognized. An illustration of this would be a case in which the purchaser came to the broker's office, was furnished by him with the information and sent to the property. If the purchaser then went to the owner direct and a deal was made between them even though the broker's name was not mentioned he would have an enforceable claim for commission.<sup>15</sup> If a broker advertises property, receives and transmits an offer, but the sale is finally consummated directly between owner and purchaser, he is entitled to commission.<sup>16</sup>

**General rules as to earning commission.**—In order to recover commissions, the broker must: (1) show that he was employed; (2) be the procuring cause of the sale; (3) bring about the deal on the terms of his employer; (4) act in good faith; (5) produce an available purchaser, which under the general rule is ready and willing to purchase and also legally able to do so; (6) bring about a completed transaction.<sup>17</sup> We have already seen that double employment or secret sharing in profits violates the requirements that the broker act in good faith. The purchaser brought by the broker must meet all

<sup>15</sup> Colonial Trust Co. vs. Pacific Co., 158 Fed. 280; Kalfstein vs. Jackson, 132 App. Div. 1 N. Y.

<sup>16</sup> Doran vs. Bussard 18 App. Div. 387 (N. Y.).

<sup>17</sup> Gross on Real Estate Brokers, page 103.

of the terms as stated by the seller, unless the seller is willing to modify them. The broker must complete his work. He cannot abandon the negotiations and expect that, if the parties, later and in good faith, get together and make a deal, he will be able to recover commission. The employer must give the broker a fair chance to complete the transaction once he commences it, but having done so he may refuse to further negotiate through him and may take up the matter direct or through another broker. Mere introduction of the parties by the broker, or commencement of negotiations do not limit the owner to dealing with the purchaser through this broker forever.

**Deferring or waiving commissions.**—A broker is entitled to his commission as soon as his work is done. He does not have to wait until title closes and any agreement he may make to do so, after his commission has been earned, would not be binding upon him, but would fail for lack of consideration. The same would be true of an agreement made under similar circumstances to take less than the regular commission, or to split the commission with some one. In some cases in order to make a deal, an owner may modify his terms on condition that the commission be deferred or reduced. If this can be shown to be a consideration for the promise, the broker would be bound by it.

The refusal of the seller to complete the transaction, or his inability to do so, does not affect the broker's claim for commission. Nor does the failure to complete on the part of the purchaser affect it. Owners in making a contract of sale or exchange should see that they obtain a sufficient deposit as their liability for commission to the broker is fixed.

**Who pays the commission.**—It is the employer who is liable for the commission in every case. The employer of the broker is usually the owner of the property or the owner's representative. In some cases the purchaser employs the broker to obtain the property for him. The rule as to double employment has been noted. It is no violation of this rule for a purchaser to employ a broker to procure the property, with the understanding that whatever commission he receives shall be paid by the seller. It is understood that the site for the Pennsylvania Station in New York City was assembled by the brokers under an arrangement of this kind. Persons not owning the property, or those acting in a representative capac-

ity are personally liable for commission if they employ the broker to sell the property. It sometimes happens that a purchaser will, in the contract, assume the seller's obligation to pay the broker's commission. This agreement is good between vendor and vendee, but it has no affect upon the right of the broker to recover from his employer. A broker may usually employ sub-agents, but they must look to him for commissions.

**Commissions on exchanges, loans and rentals.**—The rules which apply to recovery of commission on sales apply also to exchanges. It is customary, however, for both parties to an exchange to pay a commission based on the value or price of their respective properties. A statement in the contract that each party shall pay the broker is sufficient notice to each that he is receiving commission from the other. He has no right to *secretly* make a double commission. It often happens that two or more brokers are interested in an exchange representing opposite sides, and they sometimes pool their commissions and take an equal division of them.

The broker is usually entitled to commission for procuring a mortgage loan only in the event of the loan being actually made, or in case he had procured an acceptance of it and it failed to close through defect in the title to the property or fault of the borrower. This is the New York rule.<sup>18</sup> The reason for this rule is that there is rarely an enforceable agreement on the part of a lender to make a loan. The lender may agree to accept it, but this does not constitute a contract. In other jurisdictions the rule seems to be that the broker has earned his commission when he produces a lender, willing, ready and able to make the loan on the terms offered.<sup>19</sup>

The New York rule with regard to commissions for making leases is similar to that of procuring loans. The broker is not entitled to compensation unless a lease or a binding agreement for a lease is obtained. The broker would, however, be entitled to his commission in case the owner tried to impose new and unreasonable terms upon a prospective tenant and the lease was not made for that reason.<sup>20</sup> In a Maine case it was

<sup>18</sup> *Duckworth vs. Rogers*, 109 App. Div. 168 (N. Y.); *Holliday vs. Roxbury Dist. Co.*, 130 App. Div. 654 (N. Y.).

<sup>19</sup> *Peet vs. Sherwood*, 43 Minn. 448.

<sup>20</sup> *Crombie vs. Waldo*, 137 N. Y. 129; *Tenenbaum vs. Boehm*, 126 App. Div. 731 (N. Y.).

held that the broker's duty was no more than to bring the owner one willing to become a tenant on the owner's terms.<sup>21</sup> When a lease has been made the broker is entitled to his full commission and this is so regardless of the tenant's subsequent default, unless of course the broker has made a binding agreement to the contrary.

**Duty of principal to broker.**—The principal having employed the broker should give him a fair chance to accomplish his work. He cannot capriciously terminate the employment while the negotiations are being carried on, but the broker having had a fair chance and failed, or having abandoned his efforts, the principal is free to treat with the same customer, either directly or through another broker without liability to the first broker. An owner may employ several brokers to sell the property and the first one who succeeds gets the reward. He may negotiate with purchasers himself and may sell without the help of any broker. An exclusive agency prevents the owner from employing other brokers, but does not prevent a sale through his own efforts free from claim of commission unless the terms of the exclusive agency provide otherwise.

**Duty of broker to principal.**—It is the duty of the broker to act in the best interests of his employer and to obtain the best price and terms for him. He is bound not only to good faith but to reasonable diligence, and to such skill as is ordinarily possessed by persons of common capacity engaged in the same business. He must follow instructions and not exceed his authority. He must reveal to his principal all information that may come to him relating to the transaction under consideration. Concealing facts material to the interests of his employer amounts to fraud. The broker may, for example, know that a prospective purchaser has actual need of his employer's property. He should advise his employer of this in order that the owner may get a better price or that he may not be moved by arguments to accept a lower price. The broker however is not obliged to violate a confidence. If he knows that a prospective purchaser is not acting for himself but for some one else and he is in honor bound not to reveal the fact, he may withhold it but he should apprise his employer that he is dealing with an undisclosed principal.

**Statements made by a broker.**—A broker makes many state-

<sup>21</sup> *Mears vs. Jones*, 102 Me. 490.

ments in the course of negotiations which may be mere opinions or arguments or "sidewalk conversation." He may not, however, make misstatements of fact as to material matters, and a purchaser may disaffirm a contract induced by such misstatements. If the broker makes the misrepresentations relying on information furnished by the owner he would be entitled to his commission even though the purchaser were relieved from the contract. Unauthorized misstatements made by the broker, with similar result, will cause him to forfeit his rights, although if the fruit of the broker's work is accepted by the seller knowing of such misstatement, the broker may recover commission.

Misrepresentations such as will relieve a purchaser from a contract must be as to some material fact such as the size of the plot, the terms of leases or the restrictive covenants. In one case it was shown that an owner made an unintentional misrepresentation of the size of the plot. The purchaser refused to sign the contract when the real dimensions became known and the broker sued for commission. It was held that the broker was employed to sell a certain piece of property with which he was familiar, that the statement as to size by the owner was not a warranty, and that the broker could not recover a commission.<sup>22</sup>

**Termination of agency.**—The employment of the broker is not usually for a definite time. It is revokable at will in good faith by either party, or by mutual consent. If a reasonable period of time has elapsed and the object has not been performed the agency may be considered at an end. It is also terminated by the death or insanity of either party, by bankruptcy and by the destruction of the subject matter. If the transaction sought has been accomplished, either by the broker himself or by another broker, or by the principal, the employment has ceased.

**Rates of commissions.**—The amount of commission due a broker on any transaction may be fixed by a definite agreement between the parties. In the absence of an agreement, custom prevails. The rates established by a real estate board are often evidence of the customs of the business in a particular locality. Schedules of charges approved by some of the boards are quoted at length in the appendix.<sup>23</sup>

<sup>22</sup> *Hausman vs. Herdtfelder*, 81 App. Div. 46 (N. Y.).

<sup>23</sup> See Appendix, forms 71-75.

## CHAPTER XIII

### MANAGEMENT

**Management as a business.**—The management of improved real property is a branch of the agency division of the real estate business. It engages the attention of a number of real estate men, some of whom have built up organizations of marked efficiency. These organizations offer to the owner the combined knowledge, ability and experience of all their members.

Spear and Company of New York City, make the following statement in an issue of their Bulletin:

"We believe that a modern real estate organization should be made up of men who combine integrity and good judgment with a knowledge of real estate conditions.

"We believe that only through the constant operation of these qualities can successful management be assured.

"We believe that the management of property entrusted to us entails serious obligations, and that the fulfillment of these obligations comes first and our profit last."

**Principles governing management.**—There are at least two good reasons for the employment of a manager by an owner of real estate. First, the owner is relieved of the labor and detail involved in the collections of rents, the physical care of the property and the keeping of accounts. Secondly, a good manager is usually able to make more advantageous leases, will lose less rents through vacancies, and have lower expenses than would an owner managing his own property. There may be exceptions to this in the case of owners having both time and real estate experiences, but reference is here made to the usual owner to whom real estate is a side-issue or investment.

The work of a management organization consists of five things—

*First:* Marketing space, that is securing the tenants for the building at the best rates obtainable.

*Second:* The collection of the rents.

*Third:* Purchases of supplies and equipment and expenditures for repairs.

*Fourth:* Physical care of the premises, attendance to complaints, and hiring of employees.

*Fifth:* Keeping proper accounts.

There are several classes of urban realty which engage the attention of expert managers.

They include: (a) Apartment houses; (b) Loft buildings; (c) Office buildings; (d) Stores; (e) Dwellings.

The property of each of the foregoing classes has its own peculiar problems. The methods used for renting space and retaining tenants in an apartment house differ from those applying to loft and office buildings but the underlying principles are the same as with selling goods, rentable space must be offered to the right market, the prospective customer must be reached. When secured, he must be retained, his surroundings must be suitable to him, he must be kept satisfied and last but not least he must pay his rent.

The Bulletin of Spear and Company may again be quoted:—

“Good Management is our vital concern. Our endeavor is first to create a desire for Good Management in the Owner, and then to devote all our effort and all our energy to attain that end.

“Good Management approaches and solves, from the material and practical side, the manifold problems with which the owner is constantly confronted, and obtains full value for his expenditures while keeping the ultimate cost of his building within the limits of normal appropriation.”

**Choice of a manager.**—The choice of a manager naturally requires careful thought on the part of an owner. His desire will be to secure the services of an agent who will produce the best results with the property. The results of the agent's work will be shown not only in realizing the largest amount of net income obtainable, but also in the maintenance of the property in a normal and reasonable state of repair. The agent selected by the owner should be one possessing an accurate knowledge of conditions affecting rents so that when space in the building is to be rented a lease may be made for the owner on the best possible terms. If the owner or his agent does not know the market, valuable opportunities may be wasted. The knowledge the agent should possess comes only through experience and by his being in close touch with the requirements of tenants and the prices they are willing to pay for space. The agent should be one having trained assistants or associates to take care



of each department of his business, i.e., collections, repairs, supplies, insurance, accounting etc. An owner, then, will be careful to seek an agent who has the ability to give successful management and an organization known for its ability and efficiency in handling real property.

**Renting space.**—The landlord's desire is to rent his property so that it will produce a proper income on his investment; the tenant wishes the use of a certain amount of space at the lowest possible cost to him. In renting property, the owner's interests are affected by four things; the character of the tenant, the use to which he will put the property, the amount of the rent and the term of the lease.

The more valuable a building, the more important it is to safeguard the character of the tenancy. There is a great deal of property where it makes little difference to the landlord who his tenant may be as long as he uses the property in a lawful manner. On the other hand, in some apartment houses, the references of prospective tenants are carefully investigated before the tenant is accepted. In a commercial building suitable for the display of goods and visited by men and women buyers, it would usually be unwise to rent space for use as a sweatshop. Owners of buildings in a good retail business section may refuse to rent stores for any business considered objectionable. Briefly stated, it is unwise to rent part of a building for a purpose which will adversely affect the best interests of the other tenants in the building.

In making leases the amount of the rent and the length of the term are often considered together. The landlord is entitled to the maximum current rental. If space is renting at one dollar per square foot, or if apartments in similar houses in the neighborhood are renting at fifty dollars per month per room, that is what the owner should receive, all conditions being equal. But for how long a term should he make the lease? Is it advisable to get the tenant to sign a long lease or a short one? No general rule can be laid down. It may be suggested however that in periods of depression, when rents are low, the owner may do well to rent for the current price in order to avoid loss through vacancies, but that he should make the lease for a short term only. The period of depression may end, and rents advance in a very short time so that when the lease expires a new lease may be consummated at the proper and adequate rental. A short time ago a ten-year lease was made for part of

a building in Brooklyn at about forty-two cents per square foot. Soon after making the lease the demand for space increased so that in the neighborhood of the building referred to, it was worth eighty cents per square foot. The lease was therefore not a good one for the landlord. In another case a lease was made for five years with a privilege of a renewal of five years more. Shortly after the lease was made the tenant requested that he be given the privilege of an additional five years, which was granted him. Now, before the first term of five years is up, the space could be rented for double its present rent, but it is tied up for ten years more at the low rental. This offers an example of an unwise lease.

Mr. Aaron Robinowitz in an address on "The Profitable Renting of Business Property" says:—

"The secret of renting business property lies in reducing space to terms of a tangible commodity. Most people feel that this process is something quite vague and not at all a thing that is concrete or definite. Actually, the sale of space does not differ from the sale of other merchandise, and it responds to much the same treatment. The merchant who has fifty thousand dollars worth of silk on his shelves, lays out a campaign to sell it. He has his salesmen call on those buyers who can logically use his product. He wastes no time in trying to sell his silks to woolen buyers, but calls on a particular trade persistently until a purchaser is found for his merchandise.

"Since space is a commodity similar to other merchandise, the same selling principles should be applied. In selling this space and particularly in renting business property, it is necessary first to determine the logical class of tenants for a building, and then to canvass the merchants and manufacturers in this class until the building is rented. When we have property to rent in any district, it is presented to those who are logical tenants for this district."

Also:—

"It is plain, therefore, that what we have for sale requires thorough analysis and is no different from any other commodity to be marketed, save that a greater responsibility rests upon the space salesman than upon the merchandise salesman. For if we fail to sell a commercial product today its value may not be diminished tomorrow. But a day gone by in the sale of space is a day gone forever—an income lost that can never be retrieved.

The element of time enters so largely into the sale of space that it becomes, in fact, the very essence of our commodity."

**Collections.**—Tenants are expected to pay rent promptly when due, and an alert manager will see that they are not permitted to get in arrears. A system of collections will include the mailing of bills in advance of the due date, calling on the tenants who do not remit by mail, personal letters asking for payment, notices to delinquents that an action will be taken against them, and finally a legal action itself. Of course, care and judgment must be exercised in dealing with tenants regarding unpaid rent. The agent should strive for a good record on his collections and a minimum of losses through bad debts, but should be careful not to antagonize a desirable tenant.

**Expenditures.**—To spend money to operate and maintain a building, but to spend it wisely is part of the manager's work. Many expenditures are routine. These include the payment of the wages of the employees, the bills for light, heat and power and other recurring items. Even in these economy can be practiced. Every employee should give the time for which he is paid, and his work should be worth the pay. Coal contracts may be made so as to obtain the fuel at lowest rates and to get a good quality of it. Checks on unnecessary waste should be made.

Bills for repairs and renewals are usual in every building. The building must be maintained or it will run down, tenants will become dissatisfied, and rents will decrease. The expert manager will be familiar with the names of a number of good repair men and will be able to specify just what work is to be done and the kind of material to be used on the job. He will see that he gets work and materials of the proper quality and that he pays no more than current prices for them. It is often better to get high grade work even though it cost more than inferior work, but in any event full value should be received for the expenditure of the owner's money.

**Physical care of the property.**—Those who manage property are usually charged with its physical care. They must maintain the character of the building in order that it shall not depreciate in value, that desirable tenants be attracted to it and retained and to avoid liability for damages arising from neglect.

The building should be kept clean and attractive in appearance, inside and out. Paint should be applied as soon as required. Paint covers dirt and stains and prevents rust and

decay. The janitor and his assistants should be industrious and constantly alert. Unsanitary conditions must be avoided. Leaking water supply pipes, waste pipes, and steam pipes should receive immediate attention. Halls should be kept lighted, and elevators running. Other parts of the building to receive attention are roofs, stairs, steam boilers and radiators, skylights, doors and windows, etc. Many of the things mentioned apply only to those buildings rented to several tenants and where the landlord controls portions of the building. In some cases the landlord makes no repairs and is not liable for damages. The question of liability for damages has been more fully discussed in the chapter on Leases.

**Accounting.**—Accounts with tenants are usually kept in a loose leaf ledger. There is a master sheet on which is written as a heading the location of the building. There will be columns in which are listed first, the floor, apartment, office, or other portion of the building rented separately, then opposite these the names of the tenants, the monthly rents, and the particulars of the lease. Inserted in the binder will be narrow leaves headed with the months, several months on a page, and which will show the debit to the tenant for the month, the payment credited and the balance, if any, carried over. The account with the tenant is read across and by the insertion of additional narrow leaves the necessity of re-writing the master sheet is avoided.

The account with the owner is simply a debit and credit ledger account. He is credited for all rent collected and expenses refunded. He is debited with the various expenditures made for him and with the amount of the agent's commission. An abstract of the account with vouchers and a check for the balance is regularly sent him, usually each month.

**Insurance.**—Owners carry for their protection various kinds of insurance. Among them are fire, liability, plate glass, elevator, steam boiler, workman's compensation and rent insurance. The agent can assist in keeping fire insurance premiums down to a minimum by eliminating fire hazards as much as possible. Sometimes the character of a tenant's business increases the insurance rate on the building. This should be recognized in making the lease with such tenant, possibly by having him agree to pay the additional premium caused by his occupancy. A study of the rate schedule for the building may suggest methods of securing reductions in the rate. Liability insurance

is carried so that any claim for damages is defended by the insurance company and loss, if any, paid by it. Plate glass insurance is against breakage. Sometimes the tenant pays the premium on it as additional rent. Elevator, steam boiler and workman's compensation insurance are important, the last mentioned being required by law. Rent insurance is entirely optional with the owner. Many do not carry it, being willing to assume the risk of a loss of rents due to a fire.

**Agent's relations with the tenant.**—The agent seeks to keep his tenants satisfied. He should give them opportunity to make complaints. Sometimes blanks are furnished tenants for the purpose of writing out complaints. If a tenant calls in person, or by telephone his complaint should receive respectful attention and a prompt investigation. The janitor should be instructed to report complaints, and so also should collectors and inspectors who get the complaints on their visits to the building. Attention to complaints does not mean that the tenant gets all he asks for, but it does mean that an improper condition will be remedied. The landlord is the one the agent represents and it is concern for the landlord's best interests which will govern the agent in his relations with the tenants. Forms of a complaint blank and repair blank are reproduced in the appendix. (Forms 80 and 81.)

**Agent's relations with the owner.**—It is advisable for the agent to make a contract of employment with the owner (appendix form 79). Having made the contract, the agent will use his efforts to give the owner efficient, honest and, successful services. He will build up a clientele if he can prove the value of his work and satisfy his employer.

**Compensation of manager.**—The compensation of the real estate manager for the service he renders consists of commissions for rentals made and a percentage of the gross rents collected. The contract of employment will govern the rate to be charged and such rate will usually be that fixed by the real estate board or the customs of the business in the locality.

## CHAPTER XIV

### THE VALUATION OF REAL ESTATE

**Theory of land values.**—Agricultural land has value because of its fertility, that is, its ability to yield produce for its owners. However, the most fertile land is not always the most valuable. Proximity to communities and to means of transportation makes some agricultural land more valuable than other land, more fertile but also more remote. In cities, towns and villages, land is of use chiefly for placing buildings upon it. The use to which such buildings may be put determines the value of the land in relation to the other land in the community and their use depends to a great extent upon their location.

**Actual or potential rent a measure of value.**—The value of land in the final analysis is the amount of its economic or ground rent capitalized. In the case of farm land its fertility and accessibility determine its rent. Urban land must usually be improved with buildings in order to produce rent, but even if unimproved it has a potential rent which would be made actual if a suitable improvement were made upon it. The amount of ground rent of a parcel of urban land is the total amount of the gross rent derived from the land and building less actual expenses, charges and taxes, and after deducting interest on the cost of the building and a sufficient amount for depreciation of the building. The net amount after such deductions would represent the amount paid for the use of the land or the location, that is to say, it is the economic or ground rent. The value is obtained by considering the ground rent to be the income on the sum at a fixed percentage. The percentage used should be the prevailing average rate of interest on investments. However, the same interest rate cannot be used in connection with property of all classes. Some property, such as that used for financial or business purposes, is of a very high type and its value is stable or increasing, and the rate of return on it would be low compared with that from other property in the same manner as the return on high-class bonds and other securities is relatively low. Other property, such as that used for cheap tenements, may be considered to have

reached its maximum value and may be adversely affected by changing conditions. The rate of return on property of the latter class should be higher as having an element of greater risk for the investor. In any case to obtain the maximum ground rent the building should be the suitable improvement for the location and should be managed in such a way as to obtain the best income possible.

**Comparisons of values with respect to use of land.**—The rent paid depends on the location of the land. Highest rents and consequently greatest values are found in those places where the most lucrative businesses are conducted, and values grade down to the places where a great deal of space produces only a small return. In valuing improved property, the land and the building must be considered separately. It costs no more to erect a building in a good location than in a poor one. The following list shows the relative value of land based on location and use.

- a. Financial centers such as Wall Street and the adjoining streets in New York City.
- b. High-class retail business. In places where there is no financial center, this is usually the most valuable land.
- c. High-class residential property, used by people who will pay high prices for exclusive surroundings.
- d. Land used for hotels, the better residential apartments, and office buildings outside the financial district.
- e. Wholesale business districts. Often the best land for wholesale business is that which is next to the retail district.
- f. Land useful for ordinary tenement purposes, from the moderately priced apartment down to the cheapest type of flat or tenement; also land used for small residences, the latter being usually less valuable than the land for tenements.
- g. Land for suburban or detached residences.
- h. Land for factory purposes.
- i. Farm lands.
- j. Timber lands.
- k. Grazing land and waste land.

**Structure of cities and their direction of growth.**—The

location and creation of very few communities have been the result of a preconceived plan; neither did they come into being accidentally. Their existence and location have been due to influences of various kinds. In ancient times, defense against enemies drew people together and led them to place their towns at points of advantage. London was located in a swamp, Paris on an island. Commerce and manufactures have long been factors in creating cities and so have political, social and religious influences. Trade routes have often located cities at points where a break in the method of transportation occurs. This is illustrated by seaports where ships load and unload their cargoes, much of which is transshipped by rail; by cities at the head of navigation on a river and by those at the intersection of important highways and railroads.

A city usually commences at that point which is most convenient for its intercourse with the rest of the world. This point may be deep water alongside of solid ground or other considerations of a physical nature. The fort, as a means of defense, was of course the factor determining the starting-point of some early towns.

Geographical and topographical conditions and lines of transportation affect the growth of a city away from its starting-point. Growth in cities has been described by Mr. Richard M. Hurd in "Principles of City Land Values" as of two kinds, central growth which takes place from the heart and from sub-centers of attraction, and axial growth, which pushes outwardly along highways, street railways, and railroads. Central growth, he says, is due to proximity and axial growth to accessibility.

The influences which cause the city's growth often overlap and are harmonized as they come together. Business stays near the center, residences are forced to the outskirts, and other utilities find their most advantageous locations. Retail shops follow into or near new residential districts. Important stores are located in the places where they are accessible to the greatest number of the people who patronize them; wholesalers desire nearness to their customers (the retailers); manufacturers locate because of transportation or water-power, or some other reason; banks, hotels, theaters and public buildings seek the heart of a city or an important sub-center. All of these influences in a great and growing city affect its structure. They are complex and counteracting and are constantly at work,



and they are at all times being acted upon by the topographical features of the land such as bodies of water, hills and valleys.

**General rules for determining land values.**—As has already been noted, ground rent capitalized at an appropriate rate is the real basis of land value. There is another basis of value known as *exchange* value; it is the value which is indicated by sales prices, the prices at which similar land has been bought and sold. There is no such thing as an exact valuation of a piece of property, and an appraisal of it is nothing more than an opinion (although it may be that of an expert) as to its value. There are certain rules, however, that may be used as guides in determining land values.

Value has been defined as the price a purchaser who wishes to buy, but who does not have to buy, will pay to a seller who wishes to sell but who does not have to sell. In seeking to ascertain the value of any piece of property consideration should be given to the prices at which property, of the same character has been sold, provided the parties to such sales have been willing buyers and sellers. Actual sales are an excellent criterion of value. The expert in a proceeding under which land is taken for public purposes adds weight to his appraisal by getting on the record testimony of sales he has made or those of which he has knowledge. Ultimately, values as indicated by sales prices and those based on capitalized rentals will be equal, but at a given time the prices paid for land are often the expression of opinion of what it *will* be worth. The trend of a city's development may be anticipated and the future value of land discounted. The desire to anticipate values has at times led to speculation and to the selling of land at prices far in excess of actual value. The last buyers on a wave of speculation often find themselves possessed of land at prices which will not measure true value until years later.

In placing a value on a piece of land, care should be taken to ascertain any special features affecting it. This includes both its physical characteristics and its surroundings. Standard lot values usually mean values of the lots *at grade*, that is, on a level with the grade of the street. A piece of land above grade has a feature which detracts from its value—there will be some expense in removing the surplus soil. If the material to be removed to bring the lot down to grade, or to excavate for a building foundation, is rock, the added expense will be high and a very large deduction from the value of the ordinary

lot must be made for it. The same principle would apply to land much below grade or having a muddy bottom. These conditions would require filling in and consequent expense, and may even make the site unsuitable for building purposes for some time to come.

Nuisances in the neighborhood detract from values. Anything noisy, unsightly, malodorous, or in any way objectionable to the senses makes the locality less desirable for many purposes. Some businesses and manufacturing establishments are considered nuisances, and to a certain degree so may schools, hospitals and other public institutions. It is of course fair to compare sales prices of property affected by similar adverse conditions, but in making comparisons with property free from defects and detracting influences, due allowance should be made for them.

The careful appraiser will note the presence or absence of street improvements, i.e. sidewalks, curbs, pavement, sewers, water pipes, electric light, and gas mains. He will also consider any limitation on the use to which the property may be put by reason of private restrictions and restrictions imposed by governmental authority. (In New York City, for example, the zoning resolutions adopted by the Board of Estimate and Apportionment restrict to certain uses a large part of the land within the city limits.)

It may be further noted that the trend of population or of business towards a locality, and existing and projected lines of transportation usually cause an upward trend of values. The change or discontinuance of certain means of transportation (or points of transfer from one kind of conveyance to another) may have the effect of reducing values of the property which is adversely affected by such changes.

**Prices paid at auction sales.**—The prices paid for property at auction sales are not usually true indications of value. The sale may be an involuntary one, as for instance, a sale resulting from the foreclosure of a mortgage. The property may be bid in by someone having a claim against it and the full cost to the purchaser would be the bid price plus the amount of his claim. The public is not attracted to such sales unless the property is especially desirable. Voluntary auction sales are usually widely advertised and there is more competition in the bidding. A large crowd and spirited bidding may in some cases produce prices in excess of actual value, although even

under favorable circumstances sales may be made at low prices.

**The unit of value.**—In estimating land values, some unit of value must be used. In country districts this may be the acre, and land is often quoted as so much per acre. Land in most communities is divided into lots of standard size. These are said to be typical lots. The typical or standard size lot in most cities is twenty-five feet in width front and rear, by one hundred feet in depth, the side lines being at right angles to the street, or parallel with the cross street. In some, the typical lot is twenty feet wide by one hundred feet deep. In others it is fifty feet wide by one hundred feet deep. The first step in valuing a plot is to determine the value of a typical lot in the immediate vicinity and compare it with the plot under consideration, making allowance for any special features affecting it.

**Lots of greater or less depth than a typical lot.**—All lots have not the same depth as the standard lot and the problem very often is to assign a value to a shorter or deeper lot. No absolute rule that will fit every case can be laid down, but rules have been adopted by experts which are widely used and have been proved fairly accurate. They are based on the theory that the portion of the lot nearest to the street is the most valuable part and the rear the least valuable. When you shorten a lot you take from its value, but as you still have frontage on the street the value has not been diminished proportionately with the area. Thus a lot 20 x 80 containing 1,600 square feet usually is worth more than 80 per cent of the value of a lot 20 x 100 containing 2,000 square feet.

The location of the short lot may have a great deal to do with its relative value. If the proper improvement for it would be shops or stores, it might be almost as valuable as a full depth lot; if a tenement house, it might be altogether unsuited by reason of the laws governing the erection of tenement houses, and also because of the possibility that the building would not pay an adequate return on cost.

**The Hoffman and Davies rules.**—In attempting to determine the relation of the parts of a lot to each other and to the total value, appraisers have established certain rules by a system of inductive reasoning. The rule most frequently referred to in New York is known as the "Hoffman rule," compiled by Murray Hoffman, a corporation counsel for the City of New York, who acted for a time as commissioner in condemnation proceedings. He divides a typical lot into strips five feet wide

across the lot, and then arbitrarily assigns values to each of those strips, premising that each part of those five-foot strips would be of equal value throughout.

More recently William E. Davies, a real estate broker of experience in New York City, worked out and published a rule agreeing in many particulars with the Hoffman rule, and better in some respects, because it ascribes a value to each foot in the lot, instead of assuming that every foot of each five-foot strip is of the same value. He has also made allowance for a modern condition which did not exist when Mr. Hoffman's table was made; that is the added worth of the land back of a line one hundred feet from the street, which has arisen by reason of modern conditions. Mr. Davies has allowed for the fact that a lot may now be two hundred feet deep, and the land all the way back may have value.

Tables showing values as fixed by the Hoffman rule and the Davies rule are given in the Appendix (forms 83 and 84).

**Value affected by width and shape of lot.**—Just as all lots are not of the same depth as the standard lot, it is also true that all lots are not of the standard width. No rule can be laid down which can be applied in every case to determine the relative value of lots of greater or less width than the standard lot. The use to which the plot should be put to produce the greatest rent will usually be the determining factor.

Some lots can be valued on the basis of so much per front foot regardless of width. A narrow lot (unless it be so narrow as to be practically useless) under such circumstances would have a value in direct proportion to its width. An example of this is land fronting on a street where small retail shops are located. There are many locations however where width is important and where narrow lots have less relative value. This is the case in localities suitable for buildings requiring large units of land. An isolated narrow lot could not here be valued on the same basis as larger units. In the ordinary dwelling house neighborhood values usually run proportionate to width.

There are some plots of irregular shape. Average width and average depth is ascertained and values computed on that basis. Lots that are merely gores or so irregular as to be incapable of use, and interior plots having no street frontage are difficult to appraise independently, being of value only when combined with adjoining land.

**Plottage.**—Two or more adjoining lots taken together have

an added value known as plottage. The added value is due to the fact that the plot of two lots or more may be used or improved to greater advantage. A building of greater size and capable of producing a larger net rental may be erected on the larger plot. In some localities the suitable improvement may be an apartment house of not less than fifty feet in width, in others it is the loft building, office building, hotel, manufacturing plant, or something else requiring a large amount of ground space. Plottage is therefore of great value in such a locality. At other places, small dwellings are erected, each on one lot; plottage is not quite so important here, but it gives some added value because of the economy of building and marketing a number of adjoining houses at the same time. Even in farm land, or acreage, large unbroken tracts are advantageous.

The added value due to plottage is usually figured to be ten per cent of the total value of the separate lots. It may be more than this amount in locations where great and important structures are erected, and less in those places where land is plentiful and large plots easily assembled. In a recent proceeding involving the valuation of the Equitable Building in New York City, it was held that there was an additional value due to plottage, but that it was not as much as twenty-five per cent.

**Corners and corner influence.**—Corner lots, that is those located at the intersection of two streets are worth more than the ordinary inside lot. The amount of additional value given to a corner depends upon the importance of the intersecting streets, and the use for which the property is suitable. This additional value is usually considered to be fifty per cent of the inside lot value, but is more in a few cases and less in others. In exceptional locations the value of the corner lot may be two or three times the value of an inside lot.

The reasons why corner lots have added value may be summarized as follows:

- (a) They are usually more suitable for improvement with a building covering a larger proportion of the surface of the lot, and sometimes a building of a greater height, than are inside lots. Where there are laws restricting the amount of land surface to be covered, corner lots are allowed a greater percentage than inside lots.



Full size inside lot value .....			\$10,000.	
Lot A	Average depth 98 feet—Value 98.8% .....	\$9,880		
	Add 50% for corner .....	4,940		\$14,820
<hr/>				
B	Average depth 94 feet—Value 96.4% .....	9,640		
	Add 10% for corner influence .....	964		10,604
<hr/>				
C	Average depth 90 feet—Value 94% .....			9,400
D	Average depth 86 feet—Value 91.6% .....			9,160
E	Average depth 82 feet—Value 89% .....			8,900
F	Average depth 78 feet—Value 86.2% .....			8,620
G	Average depth 74 feet—Value 83.4% .....	8,340		
	Add 10% for corner influence .....	834		9,174
<hr/>				
H	Average depth 70 feet—Value 80.6% .....	8,060		
	Add 50% for corner .....	4,030		12,090
<hr/>				
				\$82,768
Add 10% for plottage .....				8,276 ✓
<hr/>				
Total value of plot .....				\$91,044

The average depth of the entire plot is 84 feet, and its area is 16,800 square feet. If the value was computed on the basis of area alone it would amount to \$67,200 or \$4 per square foot. On the basis of value as illustrated the amount is \$91,044 or over \$5.40 per square foot.

**Valuation of improved property.**—Some principles governing the valuation of land having been laid down, consideration may be given to the valuation of the buildings on the land. These principles may be stated as follows:

- (a) It should first be determined whether the building is the proper or adequate improvement, that is, whether it is the improvement which yields the greatest amount of economic or ground rent. Such a building will be the one which, as an income producer, is most suited to the neighborhood.
- (b) If a building is the adequate improvement for the plot it is worth its cost to produce minus a reasonable allowance for depreciation.
- (c) The cost of a building can be computed to a fair degree of accuracy by means of factors determined by experience. These factors are applied to the number of square feet of floor surface in the building, or to the number of cubic feet contained within its walls, the result being estimated cost.

- (d) Buildings cease to be adequate improvement when the land (i.e. the location) is suited for a building of a higher type. The condition is usually progressive and is indicated by increasing land values.
- (e) It is usual to value first the land and then the land and building together. The difference will be the amount of value the building adds to the land. In the case of new buildings and those which are the proper improvement the amount of value the building adds to the land equals the amount it cost to construct. In the case of old or obsolete buildings, or those not proper improvements for the site, it will be an amount much less than cost.
- (f) Consideration should be given to fluctuations in the cost of labor and materials entering into building construction. Buildings produced in periods of low costs, if they remain the proper improvement, increase in value with increasing costs, and conversely if they are produced when costs are high these values drop with falling labor and material costs. It may be considered that *reproduction* costs are the ones to be considered rather than original costs, although prices resulting from sudden and extreme changes are not safe guides.

As an illustration of an example of a building ceasing to be the proper improvement, it may be assumed that a given piece of property when new was valued:

Land .....	\$5,000
Building (cost) .....	20,000
	<hr/>
Total .....	\$25,000

Let us assume that five years later lots had become worth \$10,000 due to the fact that the locality had become suitable for a higher type of improvement. The property under consideration, as a whole, would not have increased in value, however, as it produces the same rental as formerly. The valuation can now be stated to be:

Land .....	\$10,000
Building .....	15,000
	<hr/>
Total .....	\$25,000



The building at this point adds \$15,000 only to the value of the land. Let us further consider that at a later period the total value would be divided:

Land .....	\$24,000
Building .....	1,000
	<hr/>
Total .....	\$25,000

The plot has by this time become so valuable that the building adds to it only a nominal amount. It has practically reached the time when it should be torn down to make way for a suitable improvement. When that time arrives, the value of the old building, even though it may be physically in good condition, can be said to have *merged* in the value of the land.

**Cost of buildings.**—The estimation of the cost of a new building involves a computation of the cubic contents of the building or the number of square feet of floor surface, and the use of the correct unit cost factor. These factors are determined by experience and of course vary with material and labor prices.

The cubic contents of a building are obtained by multiplying together the figures representing its width, depth and height. The number of square feet of floor surface in the building is the product of the width by the depth by the number of floors. The computations are easy in the case of rectangular buildings but involve some complications in the case of those of irregular shape. The figures may be obtained from the architect's plans for the building or from actual measurements.

Experience with actual costs of buildings of certain types and standards lead architects, builders and appraisers to become familiar with the average costs of such buildings per cubic foot or square foot. These units are the factors which are applied to the building under consideration. If the correct type has been determined it is merely a matter of detail to figure the total number of units, apply the factor and arrive at the estimated cost.

For illustration let us assume an apartment building erected on a lot 50 feet in width by 100 feet in depth. Let us assume the law provides only 70 per cent of an inside lot may be built upon so that even if not regular the ground covered will be equal to  $50 \times 70$  or 3,500 square feet. If the building is four stories and cellar it will be about 50 feet in height so that the





cubic contents will be  $50 \times 70 \times 50 = 175,000$  cubic feet. If the factor of unit cost for such a building is 30 cents, we will obtain the correct result:  $175,000 \times 30 = \$52,500$ —cost of building.

In making our computation on the basis of square feet of floor surface, the figures will be:  $50 \times 70 = 3,500$  square feet on one floor;  $3,500 \times 5 = 17,500$  square feet on 4 floors and cellar. The cost of this building will be approximately \$3.00 per square foot, so that— $17,500 \times \$3.00 = \$52,500$ —cost of building.

As an estimate, either of the two methods would give fairly accurate results assuming of course that we had classified our building correctly as being of a grade costing 30 cents per cubic foot or \$3.00 per square foot of floor surface.

The following tables are statements of unit costs of some standard buildings, comparing pre-war costs with those of the summer of 1921:

*Cost per unit of cubic feet*

	Pre-war	1921
Frame dwellings .....	\$14—\$ .18	\$.28—\$.45
Brick dwellings .....	.15— .19	.26— .50
Cold water flats—brick .....	.12— .15	.30— .35
Steam heated non-fireproof apartments.	.19— .22	.35— .42
Fireproof elevator apartments .....	.30— .35	.60— .75
Non-fireproof loft buildings .....	.10— .15	.25— .30
Fireproof loft buildings .....	.25— .30	.34— .40
Hotels .....	.35— .50	.65—1.00
Office buildings .....	.45— 1.00	.75—2.00

*Cost per square foot of floor space*

	Pre-war	1921
Frame dwellings .....	\$2.00—\$10.00	} About twice pre-war figures
Brick dwellings .....	2.50— 10.00	
Cold water flats—brick .....	1.25— 1.75	
Steam heated non-fireproof apartments.	1.50— 2.00	
Fireproof elevator apartments .....	3.00— 6.00	
Non-fireproof loft buildings .....	1.00— 1.75	
Fireproof loft buildings .....	2.00— 3.75	
Hotels .....	3.00— 7.00	
Office buildings .....	3.00— 7.00	

Values computed from rentals.—It is generally recognized that if property is suitably improved its rental is a safe guide to value. This assumes the building to be fully rented at normal rents. The net rental is of course the amount of net income received by the owner and this sum capitalized at an

appropriate percentage gives the value. Different rates may be used when land and building values are separated and of course due allowance should be made for the depreciation of the building.

A shorter method than the foregoing is that of estimating the value from the amount of the *gross* rents. The following table gives percentages of gross rents to values of some standard building types:

Dwellings .....	12%
Cold water flats .....	12% to 15%
Steam heated flats .....	15% to 20%
Elevator apartments .....	18% to 25%
Loft buildings .....	15% to 20%
Office buildings .....	20% to 25%

The amount of service given to the tenants must be considered in determining which rate to use for any particular building. It should also be noted whether the rents are likely to be maintained, or have been increased as the result of a temporary condition. It may be safer, in attempting to value some buildings on the basis of gross rental, to take, not the rents actually being received, but those which are recognized as the fair rents for similar space. Apartment buildings in a given locality may be worth on the average a rent of twenty dollars per room per month. If one particular house happens to be rented at thirty dollars per room it is likely that the owner has taken advantage of a temporary shortage of housing space to obtain an unusually large rent. Instances have been found in which a building has been filled up by giving special inducements to tenants to rent space in it. The necessity of care in capitalizing gross rents to get a value is apparent.

Sometimes a rough estimate of value is made by traders by multiplying the gross rent by a certain number. Thus the value of an ordinary apartment is approximated at five, five and one-half, or six times the rent.

**The work of the appraiser in condemnation proceedings.**—Private property may be taken for public uses under the State's right of eminent domain. This right may be exercised by the United States Government, by the States and counties, and also by cities and villages upon which the right has been conferred. The right of eminent domain is also conferred upon public service corporations, such as railroads, and telegraph companies, whenever a public purpose is to be served by their





acquiring the land. Our constitution places a safeguard upon the rights of private property in that it guarantees that no property shall be taken except by due process of law and payment of just compensation. Due process of law includes notice to the owner and a just trial.

The proceeding by which property is taken for public uses is called a condemnation proceeding. In the case of public service corporations this proceeding may include proof by the corporation of the necessity for taking the land, but this usually does not have to be done when the land is taken by a direct governmental agency. In almost every case, the real issue to be tried is the amount of compensation to be paid the owner for the property taken. Trial is usually held before a court or before a commission appointed by a court. The proceeding also includes the assessments of the cost upon the property benefitted.

The work of the expert appraiser in condemnation proceedings consists in giving testimony before the court or commission of the value of the property condemned. Experts are usually retained by the owner and other experts by the corporation or public authorities interested. The owner wants to get as much as possible for his property, and the other side wants to pay as little as may be necessary. The experts are placed on the stand and examined as to their qualifications to act as experts and to place upon the record their opinions regarding the valuation of the property under condemnation. The examination will bring out the familiarity of the witness with the neighborhood and his personal knowledge of sales of similar property actually made. He may have to make use of the Davies or Hoffman rules, the cost of buildings, the rental value of the property, and the adequacy of the improvement. He may also have to testify as to special features pertaining to the property, tending to increase or reduce its value. Witnesses are cross-examined by the opposite side, and efforts are made to minimize the value of their testimony or to detract from its weight. The proceeding may become a battle of experts. The expert on the stand requires not only the knowledge and experience to give weight to his testimony but also the ability to conduct himself properly under examination and cross-examination. He is testifying as an expert to a valuation computed on the basis of a definite theory. He should adhere to this theory in order to be consistent and not become confused. For figures, he



should refer to notes. He should be patient and courteous yet at the same time have his wits sharp to parry questions designed to trap him.

It may be noted that on direct examination the witness, in most States, cannot testify regarding other sales in order to support his opinion of value. Cross-examination by opposing counsel may seek to bring in testimony of sales which apparently tend to show a less value than that stated by the witness, but re-direct examination will endeavor to have the witness show special features of such sales and will ask him questions regarding other sales which help the case.

If the testimony is taken before a commission, an award is made to the owner and embodied in a report to the court. The opportunity is given to both sides to state objections. The court may confirm the award or if it sees fit may send it back to the commission for a re-hearing or may appoint a new commission to hear the testimony.

**Consequential damages.**—When a part of a parcel of land under one ownership is taken by condemnation, the value of the damages to be proved is often not the value by itself of the part taken but the difference between the value of the property as a whole before the proceeding and the value of the remainder after the condemnation proceeding has taken a part of it. This amount over and above the value of the part actually taken is known as consequential damages. That is to say, the value of the remainder has been reduced as a direct result of the proceeding. Should the proceeding be for a public improvement, such as a park, which would tend to increase all values in the neighborhood, such increment cannot be used as an offset to the amount of damages sustained by the owner by reason of the condemnation of his land.

## CHAPTER XV

### MORTGAGE LOANS

**The demand for mortgage loans.**—Owners of real property are large borrowers of money, giving their land, both improved and unimproved, as security for the amounts loaned to them. The instrument by which the property is pledged is known as a mortgage, a discussion of which appears in chapter VIII. A classification of some of the principal borrowers and the reasons why they borrow on their properties, follows:

*Farmers.*—Farmers borrow on mortgage to purchase their farms, to erect buildings, to purchase tools, machinery, seed and fertilizer, to hire labor and to pay off existing indebtedness.

*Builders.*—Those who erect buildings, either for their own use or to sell to others, frequently borrow a large part of the cost on a mortgage. If the mortgage is advanced during construction it is known as a building loan mortgage. Many building loan mortgages become permanent mortgages on completion of the building.

*Operators and investors.*—Those who buy and sell real estate as operators or speculators, and those who purchase it for investment, find it desirable to invest their own funds in the property only to the extent of a part of the gross purchase price. The remainder is represented by a mortgage or mortgages, their investment is a margin or equity in the property.

*Developers of vacant tracts.*—When a tract of land is converted into building lots, that is, developed, or subdivided, a large amount of capital may be required to finance the purchase and the cost of the improvements incident to the development—grading, filling, laying out streets, putting in water pipes, etc. Those who undertake the enterprise often raise part of the capital required by means of a mortgage loan on the property.

*Home builders and buyers.*—That valuable and worthy

citizen who seeks to own his own home is a constant borrower on mortgage. He puts his savings, it may be the first fruits of his thrift, towards the purchase price and borrows the rest. It may be that his contribution is only a small part of the price and there are often both first and second mortgages on his house, but he puts himself into it, he and his family get in back of it, and the mortgages on such property, be they first or second in lien, are usually good security for the money borrowed.

*Corporation enterprises.*—Many large real estate projects are undertaken on borrowed money. They include some of the great hotels, office buildings, factories, loft buildings, warehouses, railroad terminals and stations. The borrowings may be represented by a mortgage to a single lender or by a bond issue secured by a trust mortgage.

Why it pays the owner to borrow part of the cost.—From an analysis of the various kinds of borrowers, the reasons for borrowing on a real estate mortgage are apparent. These reasons may be amplified. There are those who own property outright, free and clear of mortgage. They may mortgage the property to raise money for the purpose of paying debts, or for investment in other enterprises, or the purchase of other securities. They may also require it for developing or improving the property itself. Others never own the property free and clear, they place a mortgage on it at the time of purchase to pay part of the purchase price. Some of this borrowing may be a matter of necessity but much of it is because of the fact that it is an advantage to the owner; it pays him to have a mortgage on his property. As an illustration assume that a piece of property costing \$100,000 brings in a gross rental of \$15,000 per annum and that it is free and clear. If the taxes, repairs and other expenses and provision for depreciation amount to \$8,000 annually the net income is \$7,000 or 7% on the owner's investment. Now suppose the owner mortgages the property for \$60,000 at  $5\frac{1}{2}$  per annum. The interest amounting to \$3,300 would reduce the net income to \$3,700 per annum, but as the owner's investment is now only \$40,000 his rate of return is  $9\frac{1}{4}$  % per annum. It can be taken as a rule that when mortgage money can be borrowed at a rate less than the rate of net return on the property unmortgaged, borrowing raises the rate of return on the owner's investment.

When property is unimproved, or inadequately improved, borrowing to erect a suitable improvement is invariably an advantage. An annual loss or a very small annual return may be turned into an annual income commensurate with the value of the property. The land may be valuable but it will only yield its economic rent when improved with a building, and it is often a financial advantage to obtain a mortgage loan to pay all or part of the cost of such building. Suppose a piece of unimproved land to be worth \$100,000. The taxes can be figured at \$2,000, and the loss of interest on the money invested on the land at 5%, \$5,000, a total annual loss of \$7,000 to the owner. To save this loss the owner puts up a building costing \$200,000 and he borrows all of this amount on a mortgage at 6%. The land and building together produce a rent income of \$35,000, the taxes, repairs, depreciation and other charges are \$18,000, leaving a net rental of \$17,000. Out of this, \$12,000 is paid as interest on the money borrowed leaving \$5,000 for the owner, being 5% on his investment which is still \$100,000. He has therefore stopped his loss, and now gets an income of \$5,000. It is probable that in a case of this kind the amount of depreciation of the building would be represented by a corresponding annual payment to reduce the amount of the mortgage. No careful mortgagee would allow the building to depreciate, and permit the mortgage to remain for its full amount. It is possible that the annual payments on the mortgage would be much more than the depreciation, and if so it would mean that the owner was constantly increasing his equity by a further investment.

The two foregoing illustrations serve to show why income property may sometimes be mortgaged to advantage. The principle applies to all property dealt in for income or profit. The advantages of borrowing to buy a home are more than monetary. Mortgage loans enable families to secure homes on small cash payments. Additional savings may thereafter be applied to reduce or pay off the mortgages.

**Lenders of mortgage money.**—There are many financial institutions in the United States which make mortgage loans for the purpose of investing their own funds. These include the life insurance companies, many of which are great institutions with resources of hundreds of millions of dollars; savings banks, which are the principal depositories for the savings of the people in some sections of the country; building and loan

associations, which are organized for the purpose of encouraging thrift and home building; trust companies, both for their own funds and for trust funds in their charge; land banks and farm loan associations, both Federal and State, and, besides these, a great many charitable, educational, and other institutions. There are other corporations, many of them large, which make mortgage loans as a business, and which sell the mortgages to investors with or without a guarantee of payment, and either in whole or subdivided into bonds or certificates. Then, of course, the private investor lends his funds on real estate mortgages, dealing either directly with the borrower or through a broker or a mortgage company.

**Mortgage loans compared with other investments.**—The entire subject of the investment of funds covers a wide range and involves a consideration of many questions. The real estate mortgage as an investment has certain advantages and disadvantages as seen by comparison with other forms of investment. The principal features to be considered are safety, income yield, and marketability.

It may be emphasized that from the point of safety the mortgage loan is superior to many other investments. It is a direct lien on the land and the improvements on the land, and if it is made for a proper proportion of the value of the property the investment is well secured and repayment practically certain. It is important, however, for the investor to be assured that his lien is a legal and enforceable one and also that there is sufficient value on the property to make it safe. To have such assurance the investor does well to make his mortgage investments through persons or corporations of unquestioned ability and financial standing, unless, of course, he has the necessary real estate knowledge and experience to act for himself. Safety is, of course, increased if payment of the mortgage be guaranteed by a reliable company.

The income yield on real estate mortgages is usually higher than the return on other prime investments. When high class bonds pay the investor from  $3\frac{1}{2}\%$  to  $5\%$  per annum, real estate mortgages pay from  $4\frac{1}{2}\%$  to  $6\%$  per annum. Many choice bonds have sold on a higher basis during recent years due to peculiar conditions, and the rate on real estate mortgages has been kept down by law to  $6\%$  in many States. The result has been a better relative showing for the bond, but under normal conditions the mortgage has the advantage.

From the point of view of marketability, the mortgage often must give way to other investments. A real estate mortgage is usually made for a definite term and until maturity may not be saleable except at a loss. At maturity it may be called but collection is sometimes slow. The owner of the property often must raise the money by securing the mortgage elsewhere. If the mortgage has to be enforced by foreclosure, a certain amount of delay is inevitable. Many stocks and bonds are quickly marketable, and may be sold on a few hours' notice, thus returning the investor's money more quickly than a mortgage could be collected or sold. It must be noted however that stocks and bonds fluctuate from day to day and a sale may result in considerable loss. A mortgage, on the other hand, has often but a short time to run and can usually be collected in full at maturity, and if it is sold before maturity the loss or expense in selling is almost always a small one. There have been developments in mortgage lending in recent years which have a tendency to make mortgage loans more marketable.

Against a certain disadvantage of lack of marketability of mortgages may be put the advantages of larger income yield, a great degree of safety and, usually, an early maturity date. The objection that technical skill is needed to make mortgage investments may be answered by saying that those who lack such skill may deal with reliable concerns handling mortgage investments as a business.

The Federal and State income tax laws have worked a decided disadvantage to mortgage investments and one that cannot be overlooked. The income from State and municipal bonds is exempt from taxation, and so is that from United States Government bonds to a large extent. As mortgage interest is taxable, the net return after payment of income taxes is often less to the private investor than the return on good tax-exempt securities. The larger the investor's income the more pronounced this feature becomes. It has resulted in taking a large amount of private funds out of the mortgage market.

**Safety in mortgage lending.**—As has already been noted a mortgage is a direct lien on the property covered. If the loan is not paid the property may be sold and the proceeds applied to pay it. From the point of view of safety the mortgage should be a *first* lien, that is, it should be prior to all other claims against the property. It is true that there are mortgages

which are not first liens; they may be second mortgages or third mortgages for example. Usually no mortgage but a first mortgage can be considered a safe investment. As an illustration assume a parcel of improved city realty appraised at \$25,000. The owner secures a first mortgage of \$15,000. The property can depreciate in value about 40% before there is danger of loss to the holder of the mortgage. Suppose the owner places on the property a second mortgage of \$5,000. If the property depreciates only 20% the equity has disappeared, and the holder of the second mortgage is in danger of loss. This risk is increased if the owner neglects to pay taxes and assessments and interest on the two mortgages. In the event of foreclosure the sum of the liens may exceed the value of the property, and unless recovery can be had on the bond, the second mortgagee may lose part of his investment.

In the placing of funds in a first mortgage, the investor should satisfy himself that the mortgage is a valid lien, that is that it is made and executed by the owner or owners of the fee simple, that they have a legal right to mortgage the property, that dower and all other rights have been released or subordinated, and that it is superior to all other liens on the property. It is usually necessary to see that there are no encroachments or other defects affecting the marketability of the title, and no restrictions which have been violated or which adversely affect its value. These things can only be determined by an examination of title by a competent attorney or by a title company, or by a certificate of registration under the Torrens Law. An accurate survey should always be obtained in connection with the examination of title.

Prior even to the examination of the title, reliable information should be obtained as to the value of the property. The lender himself may have personal knowledge of the value of the property offered as security for the loan. In the absence of such knowledge he should obtain a reliable appraisal.

The question naturally arises, what percentage of the appraised valuation of a piece of property can, with safety, be loaned on a mortgage? In answering this it must be stated that no rule can be made which applies to every case. Under the law in New York, savings banks are permitted to loan 60% on improved property and 40% on unimproved and unproductive property, and many other lenders follow the same rule. In practice, however, many lenders find that safety re-

quires that in many cases the loan should be for a much smaller percentage of value than those quoted. Consideration should be given to the question of stability of value and the marketability of the security. If there should be a default on the mortgage; the property should be of such a character as to find a ready market. Property not easily saleable is not usually the best security for a loan.

Dwellings, apartment houses, stores and office buildings are classed as properties of standard values and, based on a fair appraisal, loans on them should be secure. Factories and garages are not always saleable or rentable and it is not usually wise to make too full a loan on them; the percentage of value loaned should be less. Theatres and churches are special buildings; some investors will not loan upon them at all and others loan only a small percentage of their value. In the case of special buildings, and in fact with all property, the safety of the loan is increased if the *land* value is a large proportion of the total value. Some lenders favor loans where the land value alone equals or exceeds the amount of the loan.

Mortgage loans are sometimes made on unimproved and unproductive land. There is danger in this, as such land produces no income and is frequently difficult to sell. Of course a choice plot in a large city may be an exception to this rule but it certainly applies to land in suburban sections. Farm land of good quality is not usually unproductive land, but the loan should be based on its value as farm land and not as potential building lots.

The cost of a building is not always a measure of its value. A large sum may be spent by an owner in erecting a mansion to suit his own tastes and inclinations, but commercially the building would not be worth its cost. A valuation of such property for loan purposes should be on the basis of what it would reasonably sell for. A New York lending institution recently rejected an application for a loan of \$75,000 on a mansion costing \$750,000 on the ground that, while it might be a beautiful monument its commercial value was small.

Conditions caused by the world war have resulted in building costs being increased greatly. Both materials and labor have been high in price and often difficult to obtain. Lenders used to making loans on pre-war costs have felt that these prices would ultimately return to normal and they have not thought it wise to make loans based on prices temporarily prevailing.



First mortgage loans on new buildings have been between 40% and 50% of cost (land and building) rather than the customary 60%.

**Amortization.**—Some mortgage loans are made for short terms such as one year or three years. These loans at maturity may be paid off or renewed or allowed to run as open or past due mortgages. It is a matter determined by the wishes of the lender and borrower. Some other loans are made for periods of five years or ten years. The danger of making a mortgage loan on improved property for a long term is that during the term the value of the security may depreciate. If the depreciation were only slight, it would probably make no difference to the lender, but it is conceivable that during a period of ten years, the value of a piece of property may shrink materially. The decrease in value may come about through physical depreciation or obsolescence or through changing local conditions. There may be depletion of the soil in the case of farm lands, physical depreciation of buildings due to lack of care and failure to make necessary repairs, and evolution in the types and styles of buildings make some of the old buildings obsolete. Changes in trade centers which result in business leaving a section often cause values on the old centres to decline. Examples of this may be seen in the movements of the great retail stores in New York City. When the shopping district moved elsewhere the old locality showed decreasing values. Business depressions and any condition which causes rents to be reduced naturally have an adverse effect on some realty values.

There are two ways in which the principal of a mortgage investment may be safeguarded from the effect of declining values. In the first place, a mortgage may be made for a short term, the property may be reinspected and re-appraised at each maturity and at short intervals thereafter, and reductions in the amount of the loan may be required whenever any reduction is deemed desirable. On the other hand, the mortgage may be made for a longer period with a provision that it be amortized, that is to say, that regular periodic payments be made on account of the principal during the term of the mortgage. Some of the largest lending institutions in the country are making long term mortgages with a provision for amortization of from 2% to 10% of the principal of the loan annually. Loans made under the provisions of the Fed-

eral Farm Loan Act are all amortized. Building loan associations and similar corporations require that their mortgages be paid off in installments.

The advantages of amortized loans to the lender are that the loan is constantly being reduced and made more safe and the danger of loss due to depreciation or declining value of the security is minimized. In the case of large lenders, there is a constant inflow of funds for reinvestment in other loans. The advantages to the borrower are that his debt is being paid, his equity in the property is increasing and his interest charges growing less. He also is saved the trouble and expense of renewing or replacing at short intervals and he does not have to face a possible requirement for a large reduction of the loan at one time.

There are some disadvantages to be noted in connection with amortized loans. They are not usually desirable to a private investor owning a few mortgages. He would receive on such mortgages small and frequent payments of principal, and it is often difficult to reinvest these small amounts. For such a person, a straight mortgage for a term of not too great length would seem more desirable. Many borrowers, too, are unwilling or unable to amortize their first mortgage loans. This is especially so in large cities where there is some degree of real estate activity. Investors in real property may not wish to have their incomes reduced by compulsory payments on mortgages. Builders and operators sell much property on small cash payments, taking a purchase money second mortgage in part payment. If, as is usually the case, the second mortgage is payable in installments, the owner may be unable to pay, in addition to the second mortgage installments, amounts in reduction of the first mortgage. It may be seen that no rule for amortization can be made governing every case. In some cases it is desirable, in others unwise or unnecessary. In some localities, the tendency of realty values is to increase, and if the loan is safe when made and the security increasing in value, amortization is hardly necessary.

**Advantages of a good bond.**—Elsewhere in this book explanation is made of the bond or note which accompanies the mortgage. The bond or note is the personal obligation of the borrower to repay the sum borrowed. The mortgage on the real estate is given as security for the borrower's obligation. It is always desirable to get a good bond or note—that is to

say, one made by a person or corporation financially able to pay the debt when required to do so. Of course many mortgage loans are made entirely on the value of the real estate, without any reference to the financial standing of the bondsman, but the loan is made additionally secure when the bond is of high character. Lenders like to feel that those in back of the loan are responsible and able to pay if required to do so. A loan on a factory for example made to an irresponsible owner, might be hazardous, but would probably be secure if made to a large, active and financially strong concern. In the renewal of a mortgage with a subsequent owner, consideration should be given to the effect such a renewal would have upon the original bond. If it is desired to hold the original bondsman, his consent to the renewal should be obtained. Without such consent the lender must proceed in reliance upon the property primarily and such personal obligation as the new owner can give.

**Fire insurance a necessity.**—All mortgages upon improved property should be accompanied by fire insurance policies having loss payable to the mortgagee. The insurance should be of sufficient amount and in companies of good standing. Loans should not be made or renewed on property where fire insurance cannot be obtained, unless the loan is based on land value only.

**The Federal Farm Loan Act.**—The Federal Farm Loan Act as stated in its title is "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes." Under the terms of the act there is established at Washington a Federal Farm Loan Bureau under the supervision of a Federal Farm Loan Board consisting of five members including the Secretary of the Treasury. Continental United States, excluding Alaska, is divided into twelve districts in each of which is established a Federal Land Bank with principal office located in such city within the district as the board shall designate. The subscribed capital stock of each land bank may be not less than \$750,000. The Act further provides that corporations known as national farm loan associations may be organized in any community where ten citizens owning land desire to borrow

an aggregate sum of \$20,000. New members, who must be applicants for loans, may be admitted to memberships in an association. Each borrower must subscribe to stock of the association to the amount of 5% of his loan, and no more.

Through the national farm loan associations, applications for loans to its members are made to the Federal Land Bank of the district. The limitations on these loans as stated in a circular issued by the Federal Farm Loan Bureau are as follows:

1. No loan may be made except upon the security of first mortgages.

2. The amount of the mortgage can not exceed one-half the appraised value of the land and 20 per cent of the permanent improvements thereon, which must be insured.

3. The proceeds of the loan must be used for the extinguishment of preexisting indebtedness or for productive purposes, which include the purchase of live stock, fertilizers, equipment, and improvements (see sec. 12, subd. 4, Farm Loan Act).

4. Every mortgage must contain an agreement to pay off the debt (principal and interest) in fixed annual or semi-annual installments.

5. The amount of each installment may be fixed by the borrower, but can not be less than sufficient to pay off the debt in 40 years, nor greater than to pay it off in 5 years.

6. The rate of interest charged any borrower can not exceed 6 per cent per annum.

7. The borrower can not be called upon to pay the debt except by the installments he originally fixes unless he defaults, but after five years he may pay off the whole or any portion at his option at any installment period. Under the amortization plan the term of the loan and the amount of each installment are relative; determining one fixes the other.

The amount of loan to any one borrower may not be less than \$100 nor more than \$10,000. The funds of the national farm loan association are invested in stock of the Federal Land Bank and the Land Bank holds the stock as collateral security for the loans made to the members of the association. Loans shall not exceed twenty times the amount of Federal Land Bank stock subscribed by the association. The Federal Farm Loan Board appoints a farm loan registrar in each land bank district to receive applications for the issuance of farm

loan bonds. When an application for the issuance of such bonds has been approved by the Federal Farm Loan Board, farm loan mortgages of not less than the amount of bonds to be issued are deposited with the registrar and assigned to him in trust. The bonds authorized are delivered to the land bank and may be sold by it.

It will be seen that as the stock of a land bank owned by a loan association is held as security for all the loans made to members of the association, and as the association endorses the loans, that the members are using their joint credit and are liable for each others loans to the extent of the capital contributed.

To illustrate the manner in which the system works we may assume that a number of citizens of a district form a farm national loan association for the purpose of borrowing a total amount of \$50,000 on farm mortgages. They subscribe \$2,500 to stock in the association, which is incorporated and issues its stock for the sums contributed. The stock is retained by the association as collateral security for the loans to be made. The association applies to the district Land Bank for the loans desired by its members and which aggregate \$50,000.

A report and appraisal of a committee of the association accompanies the applications for the loans. If passed on favorably by the Land Bank, the loans are granted, and at the same time the association subscribes to Land Bank stock to the amount of \$2,500, or 5% of the amount to be loaned. The stock is retained by the Land Bank as collateral. The Land Bank may use its own funds to make the loans, and it may deposit the mortgages with the registrar and obtain farm loan bonds. The farm loan bonds are sold to the public thus providing funds which the Land Bank can use for making more loans. Through the medium of the farm loan associations and the Land Banks, and by the issuance and sale of farm loan bonds, funds for mortgage loans on farms flow from investors to farmers.

The stock of a Land Bank subscribed in connection with a mortgage loan is paid and retired when the loan is fully paid as is also a corresponding amount of the farm loan association's stock. Farm loan bonds are paid at maturity by the Land Bank which issued them. If a Land Bank cannot pay its bonds upon liquidation all the other Land Banks are liable for

a proportionate amount of the deficit. Farm loan bonds are free from Federal, State and local taxation.

The act also provides that other corporations known as Joint Stock Land Banks may be formed having powers similar to those of Federal Land Banks.

**Western farm mortgage brokers.**—A number of reliable individuals as well as banks and trust companies are in the business of making loans on western farm lands. These brokers and banks through their experts and attorneys carefully examine and appraise the farms, and search the titles. If they are satisfied as to the security offered they make loans of from 25% to 50% of the appraised value. The rates of interest run as high as 8%. The loans are then sold to investors throughout the country, usually at a rate of interest lower than that paid by the borrower. The brokers or bankers attend to all details such as collection of interest, insurance and other matters, and make the difference on the rate of interest as a profit. Some of the mortgages are made in trust and bonds issued against them. The bonds are sold in denominations of \$100, \$500, and \$1,000. Many life insurance companies are investors in farm loan mortgages, and many American farm mortgages were, prior to the world war, sold to foreign investors.

**The Chicago or Straus plan of real estate financing.**—Several large firms and corporations in Chicago have specialized in the financing of building enterprises and the sale of mortgage bonds to the public. One of these firms is S. W. Straus & Co. who advertise extensively, the feature of their advertising being 6% interest to the investor and many years in business without a dollar of loss to an investor. The Prudence Company, Inc., a New York corporation, advertises Prudence Bonds which are issued against first mortgages in a manner similar to the Straus bonds. Prudence Bonds are guaranteed as to principal and interest by the corporation. The plan upon which these concerns operate may be briefly described.

Applications are received for first mortgages upon improved and income producing real estate. The property may be office, hotel, commercial or store buildings in good locations, high-class apartment houses, and well located industrial plants. Usual appraisals and examinations are made. In many cases careful consideration is given to the financial condition of the

borrower. The loans are made for a term of years with a provision for periodic payments on account of principal. These payments at the maturity date will have reduced the loan materially or paid it in full.

The mortgages may be held by the lender or deposited with a trustee and bonds or certificates issued against them in various denominations.

The bonds or certificates bearing interest at 6% are then sold to the public. As payments are made on the principal of the mortgages, bonds are paid off. The profit to the lending institution is made by charges of a fee or bonus for the loan, or from another point of view, it might be said that the loan is made at a discount. It bears interest at 6% on the full amount and as the bonds are sold on a 6% basis, the profit comes from the fee or discount charged.

The success of the concerns mentioned and other concerns in the same business is due to the care with which their loans are made, the high character of the property accepted as security, the fact that such property is income producing and that the loans are constantly being reduced and strengthened by amortization. It would also seem that 6% real estate first mortgage bonds are considered attractive by a large number of investors.

**Guaranteed mortgages.**—In many cities there are a number of mortgage companies and title companies which conduct a successful business in guaranteed mortgages. The outstanding guaranteed mortgages of some of these companies run into hundreds of millions of dollars.

These companies accept applications from borrowers for a great variety of loans. Some companies loan on improved property only while others loan on both improved and unimproved property. The percentage loaned on improved property is usually not more than 60%, and on unimproved property not more than 50%, based on valuations fixed by the company's appraisers. A large proportion of the loans are on buildings fully completed, but building loans are also made in large numbers. In fact, the title companies and mortgage companies have been important factors in the development of many cities and their suburbs by financing the construction of new buildings, especially dwellings, apartment houses and stores.

The rate of interest on the loans is the prevailing market rate for mortgages, usually not less than 5%, nor more than

6%. A fee is charged the borrower to cover the cost of examination of title and preparation and recording of necessary papers. In the case of building loans an additional fee is charged to compensate for the extra work involved.

The loans made by these companies are offered for sale to investors with principal and interest fully guaranteed. The rate to the investor is usually  $\frac{1}{2}$  of 1% less than the rate called for by the mortgage, this  $\frac{1}{2}$  of 1% being the premium charged by the company for its guarantee. The company pays the interest when due whether it has collected it or not. It also attends to the fire insurance and sees that the taxes, assessments and water rates on the property are paid by the borrower. The mortgages usually run for three years. At maturity the investor can ask for payment of the loan. Many of the loans are extended for further periods of three years. Under the agreement of guarantee, the company has the privilege of taking a reassignment of the loan from the investor. The usual practice of the companies is to pay the principal of the mortgage to the investor at maturity if he desires it, but in order to avoid being called upon to pay the principal of guarantees at a period of financial stress, they may take a certain number of months (eighteen months is the rule with one company) in which to collect the principal from the owner of the property.

Guaranteed mortgages are purchased by individual investors and institutions. While the rate of interest to them is  $\frac{1}{2}$  of 1% less than the mortgage bears, they are assured both safety and freedom from trouble and worry.

**Building loans.**—Reference has been made to the building loan mortgages of certain institutions. Other lenders make building loans, some as a regular business. Three methods may be described. An owner of land may sell it to a builder for a building operation. The builder may need not only the land but also a large part of the money with which to erect the building. In fact he may be able to pay only a small part of the price of the land in cash and expects credit for the balance. The transaction can be carried through by contracting to sell the land and to take back part or all of the sales price on a purchase money mortgage. The contract will further provide that the seller shall lend to the borrower a certain sum of money to be represented by a building loan bond and mortgage, and to be advanced by the seller at various stages



of construction of the building. In some cases the amount due on the land and the sum advanced or to be advanced on the building are combined in one mortgage. In other cases there are two separate mortgage instruments. The building loan mortgage is often made as a permanent first mortgage loan, to run for a definite period of years, with or without amortization. The land mortgage is often temporary, that is, it is paid off out of the building loan advances, or it is made subordinate to the building loan mortgage (becoming a second mortgage) and is payable in installments for a fixed period. The seller of the land can of course dispose of one or both of these mortgages if he wishes to do so and thus obtain funds for further operations.

Temporary building loans are made by some operators to finance new buildings. The loan is paid when the building is completed. A fee is charged for the loan in addition to the interest on the money advanced. The borrower pays all incidental expenses.

Mortgage loans are frequently made to builders under an agreement that when the building is completed the loan shall be made permanent—that is, it is extended for a period of say three or five years—such loans are combination building and permanent loans.

In the case of every building loan, under the laws of New York and many States, a building loan agreement must be filed in the office of the clerk of the county in which the land is situated. This is an important provision of the law and must be complied with in order to preserve the character of the mortgage lien. The building loan agreement must set forth all important details regarding the terms of the loan including a statement of how the money shall be advanced to the borrower, that is, at what times and in what amounts. (See appendix forms 54 and 55).

**Participating mortgages.**—A participating mortgage is one in which two or more persons own a share. These persons do not own the entire mortgage jointly, but each owns a specified interest in it. A mortgage may be made to a trustee who will issue certificate of ownership to each person having an interest in it. As payments of interest and principal are made, each participant receives his pro-rata share. An arrangement of this kind would usually mean that each ownership in the mortgage was coordinate. In some participating mortgages, the owner-

ships are not coordinate, but one may rank ahead of another. An owner may wish to secure a mortgage of a certain amount but on application to a lender may find the lender willing to give a smaller amount. There may be some one else however who will take the difference subject to the first lenders amount, so the mortgage is made for the total amount and is usually made to the first or largest lender and the securities placed in his possession. An agreement is made between the two lenders called a participation agreement, or ownership agreement, in which the mortgage is described and in which it is set forth that one party owns the mortgage to the extent of a certain amount of principal and interest only, and that the other party owns the balance of the mortgage debt, but that the ownership of the first party is superior to that of the second party as though one held a first mortgage for his share and the other a second mortgage for the remainder. The share of one lender in a participating mortgage of this kind is called a prior participation, and that of the other lender a subordinate participation.

**Collateral trust real estate bonds.**—There is a plan of mortgage lending which has some special features and under which bonds are issued and sold to investors. Under this plan mortgages of various amounts, large and small, are assigned to and deposited with a trustee by a mortgage company. The mortgages are the collateral for the bonds which are issued by the mortgage company. Mortgages held by the trustee must always equal or exceed the amount of bonds outstanding. As mortgages are paid or withdrawn from the trustee, other mortgages are assigned to replace them. Mortgages are made in accordance with certain strict requirements as to security, location, character of property, etc. These requirements are sometimes set forth in the collateral trust agreement. Each bond has a certification by the trustee that it is one of an issue secured by the mortgages deposited under the collateral trust agreement.

Bonds are issued in convenient denominations. They are the obligation of the mortgage company secured by the deposit of real estate mortgages with the trustee. When issued by a corporation in good standing they should be sound investments.

The Prudence-Bonds of The Prudence Company, Inc., already referred to in this chapter, and bonds issued by the Mortgage Bond Company of New York City are examples of collateral trust bonds. The first of these corporations

advertises that its bonds are nothing more or less than first mortgages of the highest type divided into denominations to meet the requirements of the average investor; that the corporation deposits with the trust company a number of prime first mortgages which, taken together, form a trust fund; that the bonds are issued in denominations of \$100, 500 and \$1,000 and are authenticated by the trust company; and that each bond is secured not by one mortgage, but by every mortgage deposited with the trust company.

**Unsound debenture issues.**—There is a wide difference between a bond secured by one or more real estate first mortgages, and an unsecured debenture bond. The former has definite real property pledged to secure it in addition to the bondsman's obligation, the latter is an agreement to repay the principal and interest, but with no property specifically pledged as security. In fact, the property of a corporation issuing debenture bonds is usually encumbered by one or more mortgages, so that the company owns merely equities. The property may be lost through foreclosure or its value may decrease. Should the company fail, the debenture bond holders become general creditors. No debenture bond should be purchased except after careful inquiry into the affairs of the company and an appraisal of the real estate equities and other assets it owns.

**Mortgage loan brokers.**—There is a large business conducted by brokers in placing mortgage loans. The broker acts as an intermediary. His services are of value to the borrower who wants the money and the lender who wishes to invest his funds. His work consists in getting applications for loans, putting them into proper shape and then finding lenders both able and willing to make the loans.

There are several things to be considered by a broker in connection with the loan application. First, is it really a desirable loan—that is, is the property of sufficient market value to warrant the loan asked. The owner may have an exaggerated idea of the value of his property and the loan he asks may be more than the broker, from his experience, knows he will be able to place. The broker may have to secure expert appraisals of the property, and may have to try to get the applicant to agree to reduce the amount of his application to a more conservative one based on the appraised value of the property. The broker also considers the type of improvement on the property. Is it a specialty such as a theatre, church or garage? If

so he will realize that the proportion of loan to value should be smaller than that of standard properties. He will also consider the places where he will be likely to have his application considered. His sources of funds may include savings banks, title companies, mortgage guarantee companies, life insurance companies, or private investors. He tries to secure the loan at one of these places, but he usually knows in advance where his chances of success are best. Lenders *are* choosers. They accept the applications they like best. If a broker knows the property which is the subject of an application, knows its value and possibilities, and is himself convinced of the merits of the loan, he ought to be able to make a convincing argument for it to one with funds to invest.

## CHAPTER XVI

### THE WORK OF THE ARCHITECT

**The architect's relation to real estate.**—The work of the architect is of importance to those engaged in the real estate business in many respects. He is consulted by those who wish to erect a building on land they own and by those who contemplate the purchase of land for a building operation. The owner determines the type of building to be erected, that is, whether it is to be a private dwelling, an apartment house, or a commercial building, and he furnishes the architect with a diagram or description of the plot. From this information, the architect advises concerning the size and shape of the proposed building, the arrangement of the rooms, and its probable cost. The information furnished by him often assists in determining whether the building will be a success commercially or not.

The architect is employed to draw finished plans and specifications for proposed buildings and for alterations and additions to existing buildings. He prepares and approves contracts for the work to be performed, he approves payments to contractors, and watches the progress of the building during construction. He guards the interests of his employer against fraud, overcharges, inferior work, delays and violations of law. His work is sometimes in the interests of the mortgagee, reporting to the mortgagee on the quality of the material and the workmanship of the building. The architect often furnishes figures which are used as a basis for fixing the amount to be loaned. If the mortgage is advanced as a building loan, the advances are often made on certificates of the architect.

**Preliminary rough sketches.**—The initial drawings made by the architect are called rough sketches. These rough sketches are merely diagrams of the proposed building showing the division of the floor space into rooms, closets and halls, and the location of doors and windows. They are not detailed drawings, but they do show the dimensions of the rooms. They are drawn to show how the building can be fitted to the lot and how the space can best be utilized. They are often used for the purpose of figuring estimated costs of the building.

In the preparation of rough sketches the architect takes into consideration the building, tenement and sanitary codes and restrictions on the property, if any (whether imposed privately or by governmental authority). He will also consider the relation of adjoining buildings to the plot in so far as they affect the light and air for the proposed building. It is important that the maximum amount of light be obtained for all the rooms.

The architect often furnishes with the rough sketches, one or more drawings showing how the front of the building will look on completion. These are drawn with the idea of creating a building having not only a well arranged interior but also an attractive exterior appearance.

**Working drawings.**—When the arrangement of the floor space of a proposed building has been decided upon, the architect prepares working drawings, or plans, for it. These plans are drawn to scale and show in minute detail and with exact dimensions each floor of the building. Exterior elevations are also shown. The plans indicate the arrangement of the plumbing, heating and lighting systems.

In some cities, a copy of the plans must be filed with the building department of the city before the work may be commenced. If the department's approval of the plans is obtained, a permit for building is issued.

Contractors are furnished with copies of the plans for the purpose of having them figure on the work and obtaining their bids. When the work has been awarded, the contractor, or the various contractors, use the plans as guides. They are required to build exactly according to the plans. It is sometimes necessary for the architect to prepare and furnish to contractors special detail drawings for the steel work, stone work, trim and other mill work, cornices, etc.

In connection with the preparation of plans, it is usual to have a diagram or survey of the lot prepared by a competent surveyor. This survey will show all that is usual on an ordinary survey, and, in addition, the location and height of adjoining buildings, the depth of the sewer below the street level, the pitch of the curb, and the location of the stakes or marks the surveyor has placed on the lot or adjoining walls.

It is often necessary to ascertain whether the walls of adjoining buildings are plumb; they frequently lean, that is, they are correct at the bottom but project at the top. A leaning wall may interfere with the erection of a steel frame building. In-

quiry should be made as to the depth below the surface of the neighbor's walls. It may be necessary to support them, entailing additional expense. Local laws affecting buildings will govern as to which owner must provide the support.

**Specifications.**—Specifications are prepared by the architect for the purpose of giving the owner, the builder, and the contractors full and accurate descriptions (kind, quality and dimensions) of the various materials and appliances to be used in the building and the manner in which the various parts of the work are to be performed. The specifications are sub-divided so that a part of them applies to each of the trades to be employed. They are used in connection with the plans in making up estimates of the cost of the building. The specifications become part of the agreement with the contractors and they are required to make their work and materials conform to its requirements.

**The architect's services.**—Sometimes the architect is employed only to prepare preliminary rough sketches and the plans and specifications for a building, and having furnished these, the owner proceeds without him. At other times the architect is employed as the owner's representative in connection with the construction of the building. In this capacity he may perform some or all of the following services: obtain bids from contractors, award contracts to successful bidders, superintend the construction work, approve payments to those entitled to them, settle disputes, if any arise, and obtain necessary permits from authorities having jurisdiction. The architect sometimes renders the owner an opinion as the cost of a building in advance of the commencement of the work, but he is not bound by the estimate unless it is part of the agreement with him.

The following is taken from the yearbook of the New York Society of Architects. It is in accord with the rules of the American Institute of Architects.

#### THE ARCHITECT'S SERVICES

"The architect's services comprehend the preliminary studies, the drawings, the specifications, the permits, the detail drawings and the supervision of the work.

"The architect's fee is based upon the total cost of the work and minimum fee is 6 per cent. The total cost comprehends

all the material and labor necessary to make the structure complete, plus the contractor's profits, and all articles purchased under his direction, and the fee is based on the value of new materials. When the architect is not retained to supervise the work, consultation fees and professional advice are to be charged according to the services rendered. The services of specialists are to be separate from the architect's commission. The entire fee is payable in the following apportionments:

Preliminary studies .....	1	} = 3%
Drawings .....	3	
Specifications .....	1	
Permits .....	1	
Detail Drawings .....	3	} = 3%
Supervision .....	3	
Total .....	12	= 6%

"This fee is for ordinary professional work and does not include specialized services.

### *Exceptions*

Dwellings costing less than \$5,000, commission.....	10%
Lofts not requiring special planning for machinery, commission..	5%
Alterations to dwellings, commission.....	12%
Alterations to business buildings, commission.....	10%

"The PRELIMINARY STUDIES include the necessary conferences, inspections, studies, and sketches to determine the problem of his client.

"The DRAWINGS consist of the plans, elevations, and sections to give the competent builder a clear understanding of all the structural conditions.

"The SPECIFICATIONS contain the statement of all the material entering into the construction, the question of quality and the character of the workmanship.

"The PERMITS comprehend the plans and specifications which are required by the City Departments for approval of the sanitary and structural requirements of the Code.

"The DETAIL DRAWINGS are the necessary supplementary drawings to illustrate the material described in the specifications and the enlarged drawings of miniature detail.

"The SUPERVISION of the architect means the inspection of



the work during its progress to ascertain if it is in conformity with the plans and specifications. In this the architect has authority to order necessary changes, to act in emergencies arising during construction, to reject any part of the work not in accordance with the drawings and specifications and to order its removal and reconstruction.

"Continuous personal superintendence of the architect or his clerk-of-works, is not included in supervision. Such service is to be charged in addition to the regular commission.

"The drawings and specifications are instruments of service and as such should remain the property of the architect."

**Methods of payment for work.**—There are three methods of compensating contractors for work performed, viz.—

- (a) A fixed price for the work. Under this method the owner knows the cost at the time he enters into the contract. The contractor estimates that the price will enable him to perform the work and obtain a profit on the contract.
- (b) Actual cost plus a percentage. Under this method the owner pays for the job only its actual cost in labor and material, but pays the contractor a percentage, usually 10%, on the cost as compensation for his services. The owner limits the profit of the contractor to the amount of the percentage. There is no reason for the contractor to perform inferior work as the owner pays its cost, but on the other hand there is no inducement to economy as the larger the cost the larger the contractor's profit. A reliable contractor will, however, in fairness to his employer, and to add to his own reputation, aim to keep the cost down.
- (c) Cost plus a percentage, with the total limited. Under this plan the owner pays cost plus a percentage as under the last described plan, but there is an added feature in that the contractor agrees that in no event shall the total cost of the work exceed a specified sum. This method places a guaranteed limit upon the cost.

There are several methods of making payments to contractors during the progress of the work. One is that of paying a proportion of the value of the work completed at stated periods, as, for example, it may be agreed that the contractor shall receive 85% of the value of the work completed each month, final payment being due thirty days after completion of the con-

tract. Another method is to have definite amounts or percentages payable upon the work reaching certain stages. An example of this would be an agreement under which the owner of a building under construction pays a certain amount when the framing is up, a second payment when the building is enclosed, a third when brown plaster is on, etc.

It is not usual that payments to contractors before completion are for the full value of the work accomplished. The amounts held back are known as retained percentages.

**Form of contract.**—A contract in general use between the contractor and the owner is known as the "Uniform Contract." A copy of this agreement is reproduced in the appendix (form 86). This contract describes the work to be performed or material to be furnished, the conditions and stipulations regarding the work and its progress, the price to be paid and the time and manner of payment. There is also reproduced in the appendix (form 85) a form of contract between the owner and the architect in which the services of the architect are described and his fee agreed upon.

**Decisions by the architect.**—When the architect is employed to superintend the construction, he may reject any part of the work not conforming to the specifications. In considering the rejection of any work, or in deciding any controversy between owner and contractor, he must be impartial. His judgment should be fair to both sides even though he is retained and paid by the owner.

**Necessary certificates.**—In many places, the authorities require certain certificates to be issued before a new building may be used for the purpose for which it was constructed. These may include a building department certificate, showing that the building code has not been violated; a tenement house department certificate permitting occupancy of the building by three or more families; certificates of boards of fire underwriters and departments of gas and electricity as to electric wiring, motors and fixtures; and, in the case of factories and loft buildings, certificates showing the weight which the various floors will sustain.

**Planning buildings.**—A suggestion may be made regarding some of the principles upon which some buildings are planned. Among these are economy of construction, economy of operation, a maximum of rentable space and facilities to attract and retain tenants. In apartments, the location of stairs, elevators,

and dumb-waiters must be considered; the rooms of each apartment must be conveniently arranged; there must be sufficient privacy but there should not be too much space devoted to halls. A steam heated apartment will be arranged differently from one in which the tenant heats his own rooms. In the latter the kitchen is often the most important room.

Factory and loft buildings are planned so as to have each floor receive as much light as possible. Plumbing facilities and elevators are placed so that if floors are sub-divided each tenant will be supplied.

## CHAPTER XVII

# THE TORRENS SYSTEM OF LAND TITLE REGISTRATION

**Origin of the system.**—The idea of a system of land title registration originated with Sir Robert Torrens of Australia, and has generally become known as the "Torrens System." Sir Robert Torrens was a business man who had been a Collector of Customs in charge of shipping. In this position he became familiar with a law under which ships were registered, under the practice of which the registry showed the name or names of the owners of the vessel and all liens and incumbrances against it. It was required that all liens or claims be noted on the registry, so that any inspection would show briefly and simply the condition of the title. Later Sir Robert Torrens became Registrar-General of South Australia. His experience with shipping led him to believe that the principle of registration of titles could be applied to land as well as ships. In 1857 he introduced a bill providing for the registration of land titles. This bill became a law in South Australia January 27, 1858, and went into effect on July 1, 1858. The idea spread rapidly. British Honduras in Central America passed a Land Registering Act the same year, 1858. Queensland, Tasmania and Victoria followed in 1861. New South Wales in 1862, New Zealand in 1870, West Australia in 1874, Fiji in 1876. Other British colonies have since adopted the system.

**The system in England.**—While we have said that the idea of a system of land title registration spread rapidly, it must also be said that the speed does not seem to have been maintained. A Land Registry Act, known as the "Lord Westbury Act," was passed in England in 1862. The law was a failure and was repealed in 1875. Only 411 titles were registered in the 13 years. It has been stated by Mr. Torrens and others that the law did not follow the original Torrens Act, but diverted from it in many essential features. The Act of 1875, which repealed this law, was known as the "Lord Cairns Act."

It simplified the system and corrected many of the mistakes of the old law. It failed, however, to provide an assurance fund out of which losses could be paid. This defect was a serious one—compensation for loss to the injured through error or otherwise was lacking. Under a new act in 1897, an assurance fund was provided, the national treasury making good any deficiency. Registration became compulsory in the County of London by the same act. The records show that 3,825 titles were registered in England and Wales in the 20 years from 1875 to 1895, and that in the following 10 years, 91,284 titles were registered in London alone.

England evidently did not get a workable Torrens system until nearly 40 years after her colony, South Australia, had one. The system, however, had to struggle against conditions peculiar to English land ownership. The law of entail prevails, and many English freeholds are inalienable, the owner in possession having only a life interest. Great landed estates exist and a large proportion of the land is in the hands of comparatively few persons. England was jealous of its customs and the lawyers were opposed to changes. However, in spite of the handicaps, the Torrens system seems to have been successfully adopted.

**The system in the United States.**—The Torrens System has had only a fair amount of success in this country. The first act in the United States was that of Illinois, in 1895. It was declared unconstitutional by the Supreme Court of the State, but was amended in 1897 so as to remove the constitutional objections. It was further amended in 1907. Massachusetts passed a Torrens law in 1898 which has been considered successful. Amendments to this law were made in 1899, 1900, 1902 and 1905. There was an Ohio act in 1896 which however, did not meet a judicial test and which was repealed in 1898. It was re-enacted in 1912, a constitutional amendment receiving popular approval. New York enacted a Torrens law in 1908, which as some one has said "did not even begin." It was also described as being the worst registration law in the world. An amendment in 1910 did not help it, but rather insured its failure. Important amendments were made to the law in 1916 and 1918. These amendments were designed to correct the defects in the previous law and to make the system more workable and popular. Opinions regarding the present law differ, but it is an undeniable fact that land title registration is not popular in

New York. The number of titles registered is negligible (less than 40 in New York County up to July, 1921).

The following nineteen States have adopted Torrens system laws: California, Illinois, Massachusetts, Oregon, Minnesota, Colorado, Washington, New York, North Carolina, Ohio, Mississippi, Nebraska, South Carolina, Virginia, Georgia, Utah, North Dakota, South Dakota and Tennessee. From present indications, the law is evidently of no practical use in a number of these States. It seems, in fact, that as to the United States, only in Massachusetts and in Cook County, Illinois, has it attained any degree of success. Those who favor the Torrens system assert that only in the last-mentioned places, and under the Federal laws of the Philippine Islands and Hawaii is there a true enactment of the system.

**Definition of the Torrens system.**—The system has been defined by its creator, Sir Robert Torrens, as follows:

“The person or persons in whom singly or collectively the fee simple is vested, either in law or in equity, may apply to have the land placed on the register of titles. The applications are submitted for examination to a barrister and to a conveyancer, who are styled ‘examiners of titles.’ These gentlemen report to the register: First: Whether the description of land is definite and clear. Second: Is the applicant in undisputed possession of the property? Third: Does he appear in equity and justice rightfully entitled thereto? Fourth: Does he produce such evidence of title as leads to the conclusion that no other person is in position to succeed against him in an action for ejectment?”

The essentials of a Torrens system are embraced in the following summary:—

(a) Application of owner in possession for registration of his title to the land.

(b) Official examination of the title to determine the ownership and the liens and claims against it.

(c) Notice to all interested parties of the application for registration. This takes the form of an action at law.

(d) Judicial determination of the title sought to be registered. This involves a determination by the court of the parties to be named or described as defendants, proper service of Court’s process, a trial and judicial taking of evidence, and a final order or decree.

(e) Registration of the title and issuance of a certificate.

This certificate must be conclusive—the registered title must be indefeasible, i.e., good against all the world.

(f) An assurance fund out of which losses may be paid. Losses arise through errors of law or fact made in the registration of a title. Indemnity should be provided for those wrongfully and permanently deprived of the land or any interest in it through the indefeasibility of the registered title.

(g) Permanency of registration—there should be no privilege of withdrawal—the land once in the system must remain there forever. This is a feature of the system which has often been criticized, but which advocates of the system claim is essential.

(h) A simple, speedy and cheap procedure. Too much time and money cannot be spent on the initial registration. Subsequent transfers of the certificate should be readily effected at a small cost.

**The law in New York.**—The land title registration law is found in Article 12, Sections 370 to 435, inclusive, of the Real Property Law. It may be summarized as follows:—

1. The person wishing to register the title to his property files an application in the form of a verified petition with the County Clerk of the county in which the property is situated. The application is made to the Supreme Court and a final order of the Court has the effect of a judgment, which operates directly on the land and vests title thereto. If any issue is raised it is tried in Court. Only persons who own the land in fee simple and who hold and possess it (or who have the power of appointment or disposition of the fee) may apply for registration, except that holders of a contract of purchase made with the owner of the fee, may apply, but registration is not made until there is a transfer of title under the contract. No estate or interest, less than an estate in fee simple may be registered unless the fee has first been registered.

2. County Clerks (or County Registers if there be a Register) are made Registrars of title. The Registrar is required to file a bond. He may appoint one or more deputies, and he receives compensation for his services. The Registrar also appoints "official examiners of title." These official examiners must be attorneys and counsellors-at-law, and appointments are made in accordance with rules as to qualifications prescribed by the Court of Appeals, and also in accordance with the State Civil Service rules.

3. The petition for registration of a title must contain:

(a) The names and addresses of the petitioners.

(b) Whether petitioners are married and if so the names and addresses of husband or wife of each. If divorced, particulars of the divorce must be given.

(c) Whether petitioners are of full age. If minors, age must be stated, and if otherwise disabled, particulars must be given, also authority of persons acting for such persons.

(d) The names of all persons having or claiming interests in or liens upon the property or any part of it; and whether such persons are infants or otherwise incapacitated, the owners as far as known or as far as can be reasonably ascertained of the surrounding property, the People of the State of New York, all persons who have filed cautions, such additional persons as the Court designates, and "all other persons, if any, having any right or interest in or lien upon the property affected by this action, or any part thereof."

(e) Description of the land, whether vacant or improved, nature of improvement, names of occupants and nature of occupancy (unless tenants for less than one year).

(f) A statement of the estate sought to be registered, the value of the property based on the last assessment for local taxation, particulars of all mortgages, and other incumbrances known to petitioners.

(g) A prayer that the title be registered as belonging to and vested in the petitioner, or as the facts may require at the time of such registration.

The Court upon the filing of the petition refers the matter to an official examiner. The Registrar is directed to give notice to the parties affected by the action. The official examiner files a preliminary report as to sufficiency of the parties named in the petition and what additional parties, if any, should be named. The official examiner then examines the title and makes a report which sets forth the exact state and condition of the title, the rights of the petitioners and the rights of all others having or claiming rights or interests in the property or liens thereon. The report contains a statement as to whether all persons have received notice of the application for registration, and as to whether any further notice should be given to any persons. The Court may, at the request of the petitioner, refer a title to a title company for examination, instead of to an official examiner.



The Registrar gives notice to all interested persons of a hearing to be held not less than 20 days or more than 60 days hence. These notices are sent by registered mail, demanding a return receipt, to those whose address is known. The notice is published in a newspaper and it is posted in a conspicuous place on the land. The Court may require further notice to be given and may require proof of actual notice to all adjoining owners and to all owners who appear to have any interest in or claims to the land to be registered. The Registrar certifies as to the service made, the publication and posting on the land. Any controverted matter may be referred to the official examiner.

A survey, map or plan must be made of the property and filed with the petition, or filed with the official examiner and included in his report. The survey must show encroachments, if any, and must be accompanied by affidavit of the surveyor. The abstract and searches of title are filed in the registrar's office and are open for inspection.

4. Any person interested in the property may appear and defend the action whether named in the proceeding or not. The answer must state all objections to the petition. The Attorney-General of the State is appointed guardian *ad litem* to represent incompetents, unless the State has an adverse claim, in which case another attorney is appointed.

The Court may find and decree in whom title or any right or interest is vested, may determine if the title is subject to liens, incumbrances, estates, rights, liens and interests, and may direct the Registrar to register the title subject to such liens, etc. Taxes, water rates and assessments must be paid to date or registration is made subject to them. The result of the proceeding may remove clouds in the title, but there is nothing about it which will make a bad title a good and marketable one.

No final order or judgment of registration shall be made unless the Court is satisfied the title to be registered is free from reasonable doubt. The final order and judgment is forever binding and conclusive upon the State of New York, and all persons in the world whether mentioned and served with the notice or included in the description "all other persons," etc. There is no exception to the finality as to infants, lunatics, or persons under other disability or even as to persons not in being.

A registration may be set aside if procured by fraud unless the rights of an innocent party are affected, but an action to set it aside for fraud must be commenced within 10 years of registration. An action to set aside the judgment of registration or to modify it (except on the ground of fraud) must be commenced within 30 days after final order or judgment.

5. Upon entry of final order, an enrollment thereof is filed in the office of the County Clerk, and a certified copy is delivered to the Registrar. The Registrar registers the title and issues a certificate of it. The original certificate of registration remains in the office of the Registrar. It states the name or names in which title is registered; whether married or unmarried; name of husband or wife; if owner is a minor, his age; if under disability, the facts thereof and the particulars of all estates, mortgages, other liens, etc., affecting the title. A title book is kept having a separate leaf for each certificate. An exact duplicate of the certificate known as owner's duplicate, is made and delivered to the owner. The owner gives a receipt for it, thus putting his signature on record in the Registrar's office. The certificate held by the owner shows the title he holds and all liens and incumbrances against it. It will also be subject to taxes, water rates and assessments coming due after registration, certain leases made after or pending registration, easements made after registration, not of record, and liens, claims and rights which under the laws and constitution of the United States need not be of record.

Liens are not good against registered property unless noted on the certificate of registration. Adverse possession does not run against a registered title.

6. Property once registered must remain registered. It cannot be withdrawn from registration. There exists an implied agreement running with the land making it subject to the provisions of the title registration law.

When the title to registered property is transferred a deed is executed by the grantors. The certificate (owner's duplicate) is surrendered, the interested parties agree upon a statement as to the nature and effect of the transfer, the old certificate is cancelled and the Registrar issues a new one to the new owner. The title does not pass until the new registration has been completed. The deed or instrument of conveyance must contain a statement as to whether the grantor or grantors are married or unmarried.

If part of a piece of registered property is transferred a new certificate may be issued to the old owner for the remaining part. The law also provides for the registration of mortgages and leases of registered property. The instrument is filed with the Registrar accompanied by a statement of the parties as to its nature and effect. Proper notation is made on the certificate. Judgments, decrees, attachments, and other liens may be noted on the Registrar's record of the title, and so may assignments of mortgages and releases and discharges of incumbrances. If there be a sale of registered property at foreclosure, the official examiner examines the action and proceeding, reports on it to the court and to the officer making the sale. The deed is not delivered until the official examiner reports on the regularity of it. Upon production of the deed and report of the official examiner, the Court directs registration of title accordingly.

If the owner of registered property dies the heirs at law or devisees, after probate of will and issuance of letters, may petition the court for an order directing in whose name or names and in what manner the title shall be registered. There shall be made on the certificate a memorial that the estate is in process of settlement. After final settlement of the estate this memorial can be removed. Also upon the coming of age of a minor, or the termination of a trust, etc., proper notation thereof is made on the certificate. An executor with power to sell need not have the title registered in him, but the person to whom he sells must have it registered.

7. Upon registration of a title there is paid to the Registrar a sum equal to  $1/10$  of one percentum of the value of the property as fixed by the last assessment for local taxation. This is a contribution to the assurance fund and is paid to the County Treasurer, except in New York City, where payment is made to the Chamberlain.

Any person who without his own negligence sustains loss or damage or is deprived of real property or any estate, right or interest therein through any error, omission or mistake on a certificate of title shall have a cause of action against the County Treasurer (or in New York City the Chamberlain) to recover compensation. Claims are paid as are other claims against the county. In New York City they must be passed upon by the Registrar and the Corporation Counsel. The claimant has a right of action if his claim is not allowed.

No claim, however, is binding against the county for any amount in excess of the amount in the assurance fund of the county at the time. If there is not enough in the fund to pay the claim, the unpaid portion bears legal interest and is paid out of future contributions to the fund as fast as received. The law further provides that there shall be no recovery of an amount greater than the fair market value of the property at the time the right of action accrued, and any action must be begun within six years from such time.

The law specifies the fees that may be charged. The official examiner receives  $\frac{1}{10}$  of one percentum (based on assessed value) plus \$10. There is the contribution to the assurance fund of  $\frac{1}{10}$  of one per centum. The other fees are small. In addition to them, however, the applicant has to pay the cost of the advertisement, the charge for the survey and whatever charges his own attorney may make for his services.

The form of certificate of title is prescribed and is reproduced in the appendix (form 87).

**Arguments in favor of the Torrens system.**—It undoubtedly seems to be desirable to have a system of registration which accurately determines the ownership of a piece of land and all liens and claims upon it, records or registers these facts and issues a certificate of registration to the owner, the title registered being absolutely conclusive and indefeasible and the results being obtained speedily and cheaply. This is what the so-called Torrens system is designed to accomplish. Some of its advantages, as suggested by those who favor the system, may be summarized as follows:—

(a) The title to the property is searched once for all. Duplications of searches is eliminated. There is no necessity of going behind the registry to effect transfers after the first registration.

(b) Transfers, after the initial registration, can be speedily accomplished. Transactions relating to registered titles can be accomplished in a day. The old system usually took weeks to accomplish the same thing. The original registration, however, usually takes a longer time than a title company examination.

(c) Registration makes the title indefeasible. There is no need of insurance as the title cannot be attacked. Under the old system of title insurance the title company's liability is limited to the amount of the policy and this may not fully protect

the owner if there is an increase of value by reason of improvements, or for any other cause.

(d) The speed and safety with which dealings with registered titles can be accomplished should make land titles more marketable and land consequently a more liquid asset. There is no evidence to show that experience with the law in any place has proven this to be so, or if it be so, that it has increased its value or made it more attractive as an investment.

(e) The expense of transferring titles to land and of securing mortgages on it is reduced. This applies more to transfers and mortgages of titles already registered, rather than to the initial registration, although some state that registration in the first instance is cheaper than title examination and insurance.

**Objections to Torrens system.**—The following is a statement of some objections that have been made to the system in the United States:—

(a) There can be no true Torrens system in this country because any law making a registered title indefeasible violates the constitutional guarantee that no one shall be deprived of property without due process of law. Some person or persons, possibly infants, having rights in the property, may, through error or oversight, not be named in the action to register the title, and may not receive notice of it. It is asserted that the omnibus designation "all other persons, etc." does not remedy this, and that as to these persons there has not been due process of law. It must be remembered, however, that any one so injured will be compensated from the assurance fund, but it is true that as to their rights in the property itself, they are deprived of them. Some authorities assert that the question of constitutionality has been decided by the United States Supreme Court in *American Land Co. vs. Zeiss*, 219 U. S. 47.

(b) Under the provisions of the law the initial registration is by means of a judicial proceeding resulting in an order or judgment of a court, but the law permits the transfer of a registered title to be made by a registrar or other public official without notice to anyone. This is upon the assumption that the transfer is merely the performance of a ministerial act. The question has been raised whether such official not being clothed with any judicial authority is not in reality performing a judicial function in interpreting an instrument and passing upon its sufficiency. The registration of the title in the name of the new owner is conclusive and binding upon all the world. Of course,

one would not be allowed to profit by his fraud, if a forgery or other fraud had been committed, but the registered title may again be transferred and one taking it in good faith would have an indefeasible title. In cases of this kind, again, injured parties must look to the assurance fund—they cannot recover their property.

(c) Property cannot be removed from the system, once the title has been registered. No matter what may be the desires of the owner, his property is in a particular class and must stay there forever. It prevents the sale and mortgaging of the property to those who will not deal with a registered title.

(d) Upon the death of an owner of registered property a petition must be made to the court for an order directing registration of the title in the heirs and devisees. This is a proceeding involving some legal expense and is in addition to the proceedings on the estate in the Surrogate's Court. Property not under the provisions of the registration act passes at death directly to the heirs and devisees. Under the Torrens law they do not get title until, as a result of the court's order, it is registered in their names. While additional expense for the new registration may be small, it is avoided when the title is insured by a title company instead of being registered. The title policy protects not only the insured, but also his heirs and devisees, and there is no expense except the initial premium. Registered property is, of course, like other property subject to the lien of decedent's debts.

(e) Title registration is neither easy nor speedy. It takes the form of an action at law. Not only is the title examined (in practically the same manner as a title company examination) but in addition legal proceedings must be conducted. There are the notices to be given, their publication, and posting on the land, in addition to the delays caused by the successive steps in the Court proceedings. After all, the registration is not complete and conclusive until a certain period has elapsed (30 days after final order in New York). Does this indicate that the system has both ease and speed? Surely not on the initial registration. The answer of course is that *subsequent* transfers can be accomplished in a simple manner and without delay. This may be true, but what owner wishes to undertake to have his title registered? If his title is mar-

ketable, he can sell it just as readily (perhaps more so) unregistered as registered. Registration would cost him something and would add nothing to the value of the property. If the title is bad, it cannot be registered. There may be a few *questions* as to title which could be remedied by an action under the Torrens law, but the same thing could be accomplished by an action under other provisions of the law.

(f) The initial registration is not cheap. There are the fees for the examination of the title to be paid. The expense of publication of the notice, filing fees and other incidental expenses, the contribution to the assurance fund, and then the services of one's own attorney to be paid for.

(g) In New York, the county is not in back of the assurance fund; that is to say recovery of compensation for damages is limited to the amount in the fund, although future contributions may pay the claim in full in time. There have been efforts made to amend the law so as to make the county liable for claims in full regardless of the amount in the assurance fund. The Attorney-General of the State rendered an opinion that such amendment would be unconstitutional, referring to the section of the State Constitution which prohibits any county, city, town or village incurring indebtedness except for county, city, town or village purposes. On the other hand, the Hon. Samuel Seabury, former Judge of the New York Court of Appeals, has rendered a contrary opinion. It is nevertheless an objection to the registration of a title, or of bringing land forever under the registration law, that those who may be deprived of rights in the land by error or omission or misconception may not be able to recover compensation except after an indefinite period. If the system once got under way and the assurance fund grew in size this objection would be minimized.

It is not pretended that the foregoing are all of the objections to the so-called Torrens system of land registration. Those given, however, indicate to some extent why the law in New York State has not been more successful. New York real estate owners and dealers are alive and receptive to good ideas, but they are not using the Torrens system. While there are defects in the old system of title examination and insurance it evidently possesses more attractions for New Yorkers than does the one advocated by Torrens law adherents. Perhaps this is partly due to the fact that title insurance has

reached a higher development in New York than elsewhere and partly to the fact that a model Torrens law has not yet been enacted. The sentiment in favor of the Torrens system may increase and it is quite possible that the future will see it in general use throughout the country.



## APPENDICES



## NOTICE OF MECHANIC'S LIEN—NEW YORK

### NOTICE UNDER MECHANIC'S LIEN LAW

To ..... Esquire,

Clerk of the ..... and all others to whom it may concern:

PLEASE TAKE NOTICE, That (1.) ..... residing at ..... in the ..... and ..... residing at ..... in the ..... have and claim a lien for the principal and interest of the price and value of the labor and material hereinafter mentioned, upon the house, building and appurtenances, and upon the lot, premises and parcel of land upon which the same may stand, or be intended to stand, hereinafter mentioned, pursuant to the provisions of an Act of the Legislature of the State of New York, entitled "An Act in relation to liens" constituting Chapter Thirty-three of the Consolidated Laws, the same having become a law February 17, 1909, and being Chapter Thirty-eight of the Laws of 1909, and acts amendatory thereof.

(2.) The name of the owner of the real property against whose interest therein a lien is claimed is ..... and the interest of the owner as far as known to the lienor is .....

(3.) The name of the person by whom the lienor was employed is .....  
The name of the person to whom he furnished materials is .....

(4.) The labor performed was .....  
The labor to be performed is .....  
The material furnished was .....  
The material to be furnished is .....  
The agreed price and value of said labor is .....  
The agreed price and value of said material is .....

(5.) The amount unpaid to the lienor for such labor and material is.....

(6.) The time when the first items of work were performed was .....  
and the time when the first items of material were furnished was .....  
The time when the last items of work were performed was.....  
and the time when the last items of material were furnished was .....

(7.) The property to be charged with a lien is described as follows:

.....  
.....  
.....

Dated ..... 19....

COUNTY OF ..... ss.: ..... being duly sworn, says that he is ..... the claimant mentioned in the foregoing notice of lien, that he has read the said notice and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

Sworn before me, this .....

day of .....19....

**CONDITIONAL BILL OF SALE**

KNOW ALL MEN BY THESE PRESENTS, That ..... hereinafter designated as the party of the first part, for and in consideration of the sum of ..... (\$.....) Dollars, lawful money of the United States, received by the party of the first part, and the sum of ..... (\$.....) Dollars, to be paid in installments as is evidenced by ..... (.....) promissory notes, more particularly hereinafter set forth, the receipt of the above is hereby acknowledged, do.. hereby conditionally grant, and conditionally bargain and conditionally sell unto ..... of ..... hereinafter designated as the party of the second part, and by these presents do.. conditionally grant, conditionally bargain and conditionally sell unto the said party of the second part, ..... executors, administrators and assigns, all the right, title and interest that the party of the first part ha.. in and to all ..... also the good will of the said business and the lease of the premises, and all other chattels and fixtures now found in ..... of the premises now known as No. .... all of which chattels and fixtures are free and clear from any and all incumbrances.

TO HAVE AND TO HOLD and singular the business, stock, goods, chattels and fixtures above conditionally bargained, conditionally granted or intended so to be, unto the said party of the second part, executors, administrators and assigns, on the following terms and conditions:

THE CONDITION of the above is such: That if the said party of the second part shall and do well and truly pay unto the said party of the first part, or to ..... heirs, executors, administrators or assigns, the just, true and full sum of ..... (\$.....) Dollars, lawful money of the United States, in installments, and which sum of ..... (\$.....) is evidenced by ..... (.....) promissory notes each bearing even date herewith, made payable in the sum and manner following: The first note of ..... Dollars, to be paid on the ..... day of ..... 19..., and the remaining ..... (....) notes, monthly ..... thereafter until all shall have been paid for, the last note for the sum of ..... (\$.....) Dollars is to be due and payable on the ..... day of ..... 19...; then this agreement is to be in full force and effect, otherwise to be null, void, inoperative and without any effect.

The said party of the second part, ..... heirs, executors, administrators or assigns, do covenant and agree to and with the said party of the first part, ..... heirs, executors, administrators or assigns, that in the event default be made in the payment of any of the installments as hereinbefore mentioned, that it shall be lawful for, and the said party of the second part do.. hereby authorize and empower the said party of the first part, ..... executors, administrators, or assigns, to enter any dwelling house, store or other premises where the said goods and chattels are, or may be found, and to take and carry away said goods and chattels and to sell and dispose of them at public or private sale for the best price that the said party of the first part can obtain, and out of the proceeds of the said sale, retain the amount remaining unpaid, together with any and all charges and expenses that may be incurred by the said party of the first part, rendering the surplus (if any) unto the said party of the second part or to ..... executors, administrators or assigns.

The party of the second part do.. hereby agree to and with the party of the first part, or ..... heirs, executors, administrators or assigns, that in the event default be made in the payment of any of the installments as the same become due, that the amount remaining unpaid shall then, at the option of the said party of the first part, become immediately due and payable after such

default; it being understood and agreed between the parties hereto that the lease of the store aforesaid, and the good will, and the right, title and interest in and to the stock, merchandise, and fixtures of said business shall in no event pass unto the said party of the second part until the said party of the second part ha.. fully complied with all the conditions herein, and ha.. made the payments mentioned herein, and in accordance with the terms of this agreement, this being a condition precedent before the title to these premises shall pass from the party of the first part to the party of the second part.

The party of the first part, in consideration of the party of the second part fully complying with the terms aforesaid, agree.. to and with the party of the second part, or ..... heirs, executors, administrators or assigns, that the party of the first part will not engage in a business similar to the one mentioned in this agreement, either directly or indirectly, as principal, agent, servant or employee, or act for any other person, firm or corporation whatsoever for a period of ..... (.....) years from the date hereof, and not within a radius of ..... (.....) square blocks from the premises aforesaid.

The party of the second part also agree.. to keep said business fully insured against loss or damage by fire for the benefit of the party of the first part, ..... heirs, executors, administrators or assigns, in a sum not less than ..... (\$.....) Dollars, and if the party of the second part fail to procure or effect such insurance within Ten (10) days from date hereof, the party of the first part may effect such insurance and charge the cost thereof to the said party of the second part, and which charge the said party of the second part agree.. to pay on demand, or upon the failure or refusal of the said party of the second part to pay said premium, then the party of the first part may, at... option, take immediate possession of the said business, anything herein contained to the contrary notwithstanding.

The said party of the second part in consideration of the above agree.. to keep, during the continuance of this agreement, stock in a sum not less than the amount of stock now contained in the aforesaid premises, the value thereof to be not less than ..... (\$.....) Dollars, and in the event that the party of the second part fail.. to comply therewith, the balance remaining unpaid shall then, at the option of the party of the first part, become due and payable, and the possession of the business herein mentioned is to revert back to the party of the first part, and the party of the second part agree that the said party of the first part may maintain an action to eject the said party of the second part as trespasser on said premises.

The party of the second part in consideration of the sum of one dollar to ..... in hand paid by the party of the first part, the receipt whereof is hereby acknowledged, hereby agree.. to and with the party of the first part, ..... heirs, executors, administrators and assigns, that in the event the party of the second part fail.. to comply with any and all the terms and conditions of this agreement, or in the event the party of the second part fail.. to pay any and all of the installments at the time and in the manner hereinbefore mentioned, then the party of the second part authorize.. the party of the first part, ..... heirs, executors, administrators or assigns, to re-take possession of said business, stock, chattels, fixtures, and the good will thereof, and any sum of money paid hereunder shall belong to the party of the first part, ..... heirs, executors, administrators or assigns, as liquidated, fixed and stipulated damages, and not as a penalty because the parties herein cannot ascertain the exact amount of damages sustained by the said party of the first part for a breach of the conditions of this agreement by the party of the second part, and the said party of the second part agree.. to and with the said party of the first part, ..... heirs, executors, administrators or assigns, in the event said party of the second part shall default in the payment of the installments hereinbefore mentioned, or

in the event the party of the second part fail to comply with any and all the terms and conditions of this agreement, that the said party of the second part will not engage in a business similar to the one mentioned in this agreement, either directly or indirectly, as principal, agent, servant, or employee, for any person, firm or corporation whatsoever, neither will the said party of the second part establish a business of a like nature, nor cause the same to be established, for a period of ..... (....) years from date hereof, within a radius of ..... (.....) square blocks from the aforesaid premises, and the parties hereto agree that in the event of a breach of the aforementioned condition, the said party of the first part will be entitled to an injunction restraining the said party of the second part for violating the terms of the agreement hereinbefore mentioned.

IT IS ALSO UNDERSTOOD between the parties hereto, that upon full compliance by the party of the second part of all the terms, covenants and conditions herein contained, that the party of the second part is to have, hold and enjoy the above business unto ..... heirs, executors, administrators and assigns forever.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this ..... day of ..... one thousand nine hundred and ..... (19....).

In presence of,  
.....  
.....  
.....

SCHEDULE OF THE FOREGOING CONDITIONAL BILL OF SALE:

.....  
.....

STATE OF.....  
CITY OF.....  
COUNTY OF.....ss.: .....

..... being duly sworn, depose.. and say., that ..he reside.. at  
..... in the Borough of ....., in the City of .....

That ..... the same person.. who executed the within conditional bill of sale.

That ..... the sole and absolute owner.. of the property described in said conditional bill of sale and has full right to dispose of same.

That the said property, and each and every part thereof, is free and clear of any liens, mortgages, debts or other incumbrances of whatsoever kind or nature.

That the just, true, full and lawful sum due on this conditional bill of sale is (\$.....) ..... Dollars, and is to be paid in installments as mentioned and described therein; that ..he..... read the foregoing conditional bill of sale and know.. the contents thereof.

That this affidavit is made for the purpose and with the intent of inducing ..... to purchase the property described in said conditional bill of sale, knowing that ..he.. will rely thereon and pay a good and valuable consideration therefor.

Sworn to before me, this  
.....day of.....19...

No. 3

## CHATTEL MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, THAT ..... of the first part, for securing the payment of the indebtedness hereinafter mentioned, and in consideration of the sum of one dollar to ..... duly paid by ..... of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do.. grant, bargain and sell unto the said part.. of the second part ..... and all other goods and chattels mentioned in the schedule hereunto annexed, and now in the ..... TO HAVE AND TO HOLD all and singular, the goods and chattels above bargained and sold, or intended so to be, unto the said part.. of the second part, ..... his executors, administrators and assigns forever. AND ..... the said part.. of the first part, for ..... heirs, executors and administrators, all and singular of the said goods and chattels above bargained and sold unto the said part.. of the second part, ..... heirs, executors, administrators and assigns, against ..... the said part.. of the first part, and against all and every person or persons whomsoever, shall and will warrant and forever defend. UPON CONDITION, that if ..... the said part.. of the first part, shall and do well and truly pay unto the said part.. of the second part, ..... his executors, administrators or assigns, .....

.....  
 .....  
 then these presents shall be void. AND ..... the said part.. of the first part, for ..... executors, administrators and assigns, do.. covenant and agree, to and with the said part.. of the second part, ..... executors, administrators and assigns, that in case default shall be made in the payment of the said sum above mentioned, then it shall and may be lawful for, and ..... the said part.. of the first part, do.. hereby authorize and empower the said part.. of the second part, .... executors, administrators or assigns, with the aid and assistance of any person or persons, to enter ..... dwelling house, store and other premises, and such other place or places as the said goods or chattels are or may be placed, and take and carry away the said goods or chattels, and to sell and dispose of the same for the best price they can obtain, and out of the money arising therefrom, to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto ..... or to ..... executors, administrators or assigns.

AND until default be made in the payment of the said sum of money ..... to remain and continue in the quiet and peaceable possession of the said goods and chattels, and the full and free enjoyment of the same.

IN WITNESS WHEREOF, ..... the said part.. of the first part, ha.. hereunto set ..... hand.. and seal.. the ..... day of ..... one thousand nine hundred .....

.....  
 Sealed and delivered in the presence of  
 .....

SCHEDULE REFERRED TO IN THE FOREGOING MORTGAGE:  
 .....  
 .....

(ACKNOWLEDGMENT)

## FACTS TO ASCERTAIN BEFORE DRAWING CONTRACT OF SALE

1. Date of contract.
2. Name and address of seller.
3. Is seller a citizen, of full age, and competent?
4. Name of seller's wife and is she of full age.
5. Name and residence of purchaser.
6. Description of the property.
7. The purchase price.
  - (a) Amount to be paid on signing contract.
  - (b) Amount to be paid on delivery of deed.
  - (c) Existing mortgage or mortgages and details thereof.
  - (d) Purchase money mortgage, if any, and details thereof.
8. What kind of deed is to be delivered, i. e., full covenant, quit claim or bargain and sale?
9. What agreement has been made with reference to any specific personal property, i. e., gas ranges, heaters, machinery, partitions, fixtures, coal, wood, window shades, screens, carpets, rugs, hangings, etc.?
10. Is purchaser to assume the mortgage or take the property subject to it?
11. Are any exceptions or reservations to be inserted?
12. Are any special clauses to be inserted?
13. Stipulations and agreements with reference to tenancies and rights of persons in possession.
14. Stipulations and agreements, if any, to be inserted with reference to the state of facts a survey would show, i. e., party walls, encroachments, easements, etc.
15. What items are to be adjusted on the closing of title?
16. Name of the broker who brought about the sale, his address, the amount of his commission and who is to pay it and whether or not a clause covering the foregoing facts is to be inserted in the contract.
17. Are any alterations or changes being made or have they been made in street lines, name or grade?
18. Are condemnation or assessment proceedings contemplated or pending or has an award been made?
19. Who is to draw the purchase money mortgage and who is to pay the expense thereof?
20. Are there any covenants, restrictions and consents affecting the title?
21. What stipulation or agreement is to be made with reference to Tenement House, Health, Fire and Building Department and other violations?
22. The place and date on which the title is to be closed.
23. Is time to be the essence of the contract?
24. Are any alterations to be made in the premises between the date of the contract and the date of closing?

## CONTRACT OF SALE—CALIFORNIA

KNOW ALL MEN BY THESE PRESENTS, That this Agreement, made and entered into on this ..... day of ..... in the year 19... by and between ..... hereinafter known as "the seller.." and ..... herein after known as "the purchaser.."



WITNESSETH: That in consideration of the payment of the sum of ..... Dollars, the receipt of which is hereby acknowledged, and the payment of the additional sum of ..... Dollars, in United States gold coin by the purchaser.. to the seller.. as hereinafter stipulated and agreed to be paid, with the interest thereon, the seller.. agree.. to sell to the purchaser.. all that real property, situate, lying and being in the ..... County of Sacramento in the State of California, known, designated and described as follows, to wit:

.....  
 .....  
 Together with the improvements and the hereditaments and the appurtenances thereunto belonging or in any wise appertaining. And the purchaser.., in consideration of the premises, hereby agree.. to purchase the hereinbefore described real property, and pay therefor to the seller.. or said seller.. heirs, administrators, successors or assigns, in addition to the amount already paid, the additional sum of ..... Dollars, in United States gold coin, as follows, to wit:

The sum of ..... Dollars, on the ..... day of each and every month, commencing with the ..... day of ..... 19.... for a period not to exceed ..... months from date hereof, provided, however, that the purchaser.. may make larger payments at any time.

.....  
 .....  
 Together with interest thereon from this date until paid, at the rate of ..... per cent per annum, payable monthly, in like gold coin. But if not paid when due, it shall draw interest at the rate of twelve per cent per annum until paid. And it is further agreed that in case of a default in the payment of any of said sums, or any installments or interest due thereon, for the period of two months after they become due, that all money previously paid by the purchaser.. shall, at the option of the seller.., become forfeited to the seller.. and retained as settled and liquidated damages; the parties hereto agreeing that it is impossible to estimate the actual damages, and thereupon the seller.. shall be released from all obligations in law and equity to convey said real property, and the purchaser.. shall forfeit all right thereto, and shall immediately deliver the possession of it to the seller..; and herein it is agreed that time is the essence of this contract. And it is further agreed that the purchaser.. shall keep the improvements on said premises insured for three-fourths of their cash value, in the name and for the benefit of the seller.., in a company previously approved by the seller..; and in event of said purchaser.. failing to keep said improvements insured as aforesaid, then the seller.. may cause them to be insured at the expense of the purchaser.. All improvements, buildings and structures now upon said lot of land hereinbefore described, or that may hereafter be placed or built thereon, shall belong to said seller.. until the deed is made to the purchaser. Said purchaser.. shall not have the right to sell, move or incur the same until the execution of the deed.

And the purchaser.. is entitled to the possession of said premises, and may so continue, unless forfeited by the non-payment of the purchase money or any installments thereof, or interest or other payments as herein stipulated. And in consideration of the purchaser.. having the possession and occupancy of said real estate, said purchaser.. shall pay, in addition to the purchase money and insurance all taxes and assessments being a lien against it on and after the first Monday in March, 19....

.....  
 And if the purchaser.. should fail to pay any taxes or assessments, as herein specified, the seller.. may pay them, and all moneys so paid shall become a debt against the purchaser.., and the purchaser.. will on demand, repay to the

seller., in gold coin, all moneys paid by the seller.. for any taxes or assessments of any kind, or to obtain any insurance, with interest thereon from date of payment until repaid, at the rate of twelve per cent per annum, and said payments shall be secured by this contract.

And the seller.. on receiving the full payment of all the purchase money, and interest thereon, and all advances made by said seller.. for taxes, insurance or otherwise, with interest as herein agreed to be paid, agrees that ..... will convey all said real property by deed to the purchaser.. by perfect title, free from all incumbrances except such liens or incumbrances as may be caused by the acts or negligence of the purchaser., and taxes and assessments that became a lien as hereinbefore stated.

And it is further agreed and understood that this contract is to apply to and bind the heirs, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, We, the said parties, have hereunto set our hands and seals the day and year in this instrument first above written.

.....[L. S.]  
 .....[L. S.]  
 .....[L. S.]  
 .....[L. S.]

No. 6

## CONTRACT OF SALE—PENNSYLVANIA

Adopted for and by the Members of the Philadelphia Real Estate Board

AGREEMENT, made this ..... day of ..... A. D. 19.... WITNESS-ETH, That ..... Agent for ..... hereby agrees to sell to ..... who agrees to buy premises ..... for the sum of ..... Dollars, TERMS as follows: ..... Cash at signing this Agreement \$..... Cash at settlement \$..... First Mortgage \$..... Second Mortgage \$.....

Total \$.....

Premises to be conveyed clear of all liens and incumbrances, excepting existing restrictions and easements, if any.....

FIRE INSURANCE POLICIES (if accompanying existing mortgage..), to be purchased by buyer at cancellation value, if perpetual, and pro rata value, if term insurance.

TITLE is to be good and marketable and such as will be insured at regular rates by any responsible Title Insurance Company; otherwise the buyer shall be repaid his deposit money paid on account and shall also be reimbursed for the cash outlay which he may have been put to for Title Insurance and drawing papers.

Gas and electric fixtures, heating and plumbing systems, ranges and laundry tubs annexed to said Buildings are ..... included in this sale.

POSSESSION to be delivered .....

TAXES, Water Rent, House Rent, Interest on incumbrances and Ground Rent (if any) are to be apportioned to date of settlement.

SETTLEMENT to be made on or before ..... and said time is

hereby agreed to be the essence of this agreement. Should the buyer fail to make settlement as herein provided, the sum or sums paid on account are to be retained by the seller, either on account of the purchase money, or as compensation for the damages and expenses he has been put to in this behalf, as the seller shall elect, and in the latter case this contract shall become null and void and all copies to be returned to seller for cancellation.

This agreement not to be lodged in any public office for record.

Formal tender of deed and tender of moneys is hereby waived.

If a mortgage is given for any part of the purchase money, buyer will have insured the title of said mortgage and will give buyer's purchase money bond mortgage, form and condition of which are to be approved by ..... same also to be accompanied by satisfactory Fire Insurance.

It is understood that ..... is acting as Agent only and will in no case whatsoever be held liable to either party for the performance of any term or covenant of this agreement, or for damages for non-performance thereof.

It is understood that this sale is made subject to the written approval of the owner, which must be obtained within ..... days.

This agreement to extend to and be binding upon the heirs, executors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals the day and year first above written.

SEALED AND DELIVERED

in the presence of

.....[L. S.]

Agent for

.....[L. S.]

.....[L. S.]

.....[L. S.]

.....hereby approve the above contract.....19....

.....[L. S.]

.....[L. S.]

Received the day of the date of the within agreement, ..... Dollars, on account of the purchase money named therein.

.....

Agent, for

.....

No. 7

## OPTION TO PURCHASE—MASSACHUSETTS

KNOW ALL MEN BY THESE PRESENTS that ....., the party of the first part, in consideration of ..... dollars paid by ..... , the party of the second part, the receipt whereof is hereby acknowledged, hereby for myself, my heirs, executors and administrators, agree to sell and convey to the said party of the second part, or his assigns, the following described property for the following consideration: The property consists of .....

The consideration to be paid by said party of the second part, or his assigns, shall be ..... dollars. This option may be accepted by the said party of the second part, or his assigns, within ..... days from the date of this instrument, and said conveyance shall be made within ..... days after such acceptance, by a warranty ..... deed, with full covenants and dower or

curtesy release if necessary, conveying a clear title free from all incumbrances, ..... said party of the second part, or his assigns, giving to ..... said party of the first part, ..... days' notice in writing of the time and place where said conveyance shall be made and executed.

AND IT IS AGREED that if the said party of the second part, or his assigns, shall fail to accept this option, or shall, after the acceptance of this option, fail to pay the said sum of ..... dollars the consideration stated above, at the time and place agreed upon and in accordance with the conditions as hereinbefore stated, he, the said party of the second part, or his assigns, shall forfeit any and all sums paid to the party of the first part, as hereinbefore stated.

IN WITNESS WHEREOF, the said party of the first part hereto sets h... hand and seal this .... day of ..... in the year one thousand nine hundred and .....

Signed and sealed in presence of

.....  
.....  
.....

No. 8

CONTRACT OF SALE—MASSACHUSETTS

AGREEMENT made this .....day of ..... A. D. 19.... between ..... of the first part, and ..... of the second part.

The party of the first part hereby agrees to SELL, and the party of the second part to PURCHASE, a certain estate situated ..... and bounded and described as follows: .....

.....  
.....  
.....

Said premises are to be conveyed on or before ..... by a good and sufficient ..... deed of the party of the first part, conveying a good and clear title to the same, free from all incumbrances .....

..... and for such deed and conveyance the party of the second part is to pay the sum of ..... dollars, of which ..... dollars have been paid this day ..... dollars are to be paid in cash upon the delivery of said deed, and the remainder is to be paid by the note of the party of the second part, dated ..... bearing interest ..... per cent per annum, payable semi-annually, and secured by a power of sale mortgage, in the usual form, upon the said premises, such note to be payable .....

..... Full possession of the said premises, free of all tenants ..... is to be delivered to the party of the second part at the time of the delivery of the deed, the said premises to be then in the same condition in which they now are, reasonable use and wear of the buildings thereon, and damage by fire or other unavoidable casualty excepted.

The buildings on said premises shall, until the full performance of this agreement, be kept insured in the sum of ..... dollars by the party of the first part, in offices satisfactory to the party of the second part, and, in case of any loss, all sums recovered or recoverable on account of said insurance shall be paid over or assigned, on delivery of the deed, to the party of the second part, unless the premises shall previously have been restored to their former condition by the party of the first part.

Rents shall be apportioned as of the day of the delivery of the deed, and the taxes assessed for the year 19... shall be paid by .....

The deed is to be delivered and the consideration paid, if the purchaser so requires, at the Registry of Deeds in which the deed should by law be recorded.

If the party of the first part shall be unable to give title or to make conveyance as above stipulated, any payments made under this agreement shall be refunded, and all other obligations of either party hereunto shall cease, but the acceptance of a deed and possession by the party of the second part shall be deemed to be a full performance and discharge hereof.

In consideration of the above, ....., wife of the said ....., hereby agrees to join in the deed to be made as aforesaid, and to release to the party of the second part all right of dower and homestead in the said premises.

It is understood that a broker's commission of ..... per cent on the said sale is to be paid to ..... by the said party of the first part.

IN WITNESS WHEREOF the said parties hereto, and to another instrument of like tenor, set their hands and seals on the day and year first above written.

Signed and sealed in presence of

.....  
 .....  
 .....

# EXTENSION

The time for the performance of the foregoing agreement is extended until

Witness our hands and seals this ..... day of ..... 19....

.....  
 .....  
 .....

No. 9

## SALE CONTRACT—OHIO

COLUMBUS, OHIO,.....19....

I hereby propose and agree to SELL real estate described as follows, to wit:

.....  
 .....  
 at a consideration price of ..... on the following terms:  
 .....  
 .....

Possession.....

DEFERRED PAYMENTS to be secured by mortgage on premises conveyed, interest at ..... per cent per annum, payable ..... annually. Mortgage to contain 30-day default of interest clause and provision for \$...... fire insurance assigned.

ABSTRACT: Grantor to furnish complete Abstract of Title to ..... piece of property conveyed, showing good title in present owner, and free and clear of all encumbrances except as herein stated.

TAXES: Grantor to pay all taxes to and including the ..... 19.... payment. Grantee to assume all falling due and payable after said date.

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**STREET ASSESSMENTS:** Grantor to pay .....  
Grantee to assume .....

All meters, lighting fixtures, fly screens, shades and awnings, belonging to the Grantor now in said premises, to go to the Grantee without extra charge. Rentals and interest to be adjusted to date of delivery of Deed. Insurance policies to be adjusted to date of delivery of Deed and paid for by Grantee for unexpired term of said policies..

Sale to be closed within ..... days after acceptance hereof, or as soon thereafter as possible.

I agree to pay your firm your regular commission of ..... for having secured the herein purchaser for my property. Should I fail within reasonable time to fulfil the above conditions, or any accepted modification thereof, after you secure acceptance thereof, I agree to pay said commission.

This proposition is open for acceptance to and including .....

**REMARKS:** .....

I hereby accept the above proposition this ..... day of ..... 19..., and deposit with your firm \$...... to be held in trust by you on account of this contract, until the same is consummated. If the Grantor fails to fulfil ..... part of the contract the said deposit is to be returned to me. If I fail within a reasonable time to fulfil my part of the contract I agree to pay your firm your regular commission, .....

No. 10

### CONTRACT OF SALE—ILLINOIS

THIS MEMORANDUM WITNESSETH, THAT.....hereby agree to purchase at the price of ..... Dollars, the following described real estate, situated in the County of.....and State of Illinois:.....

.....  
Section.....Township.....North, Range.....East of the Third Principal Meridian, and.....agrees to sell said premises at said price, and to convey to said purchaser a good and merchantable title thereto, by general Warranty Deed, but *subject* to: (1) existing leases expiring..... the purchaser to be entitled to the rents from.....; (2) all taxes and assessments levied after the year 19.....; (3) any unpaid special taxes or assessments levied for improvements not yet made, also subject to .....

.....  
Said purchaser has paid ..... Dollars, as earnest money, to be applied on such purchase when consummated, and agrees to pay within five days after the title has been examined and found good, or accepted by him, the further sum of ..... Dollars, at the office of .....

provided a good and sufficient general Warranty Deed, conveying to said purchaser a good and merchantable title to said premises (subject as aforesaid), shall then be ready for delivery. The balance to be paid as follows:

.....  
 .....  
 with interest from the date hereof at the rate of.....per cent per annum, payable semi-annually, to be secured by the purchaser's notes and mortgage, or trust deed, of even date herewith, on said premises, in the form known as the CHICAGO REAL ESTATE BOARD FORM, for.....improved property.

A Certificate of Title issued by the Registrar of Titles of.....County, or complete merchantable Abstract of Title, or merchantable copy, shall be furnished by the vendor within a reasonable time, brought down to date hereof, which abstract shall, upon the consummation of this sale, remain with the vendor, or his assigns, as part of his security, until the deferred installments are fully paid. The purchaser or his attorney shall, within ten days after receiving such abstract, deliver to the vendor or his agent, (together with the abstract), a note or memorandum in writing, signed by him or his attorney, specifying in detail the objections he makes to the title, if any; or, if none, then stating in substance that the same is satisfactory. In case material defects be found in said title, and so reported, then if such defects be not cured within sixty days after such notice thereof, this contract shall, at the purchaser's option become absolutely null and void, and said earnest money shall be returned; notice of such election to be given to the vendor; but the purchaser may nevertheless elect to take such title as it then is, and in such case the vendor shall convey, as above agreed; provided, however, that such purchaser shall have first given a written notice of such election, within ten days after the expiration of the said sixty days, and tendered performance hereof on his part. In default of such notice of election to perform, and accompanying tender, within the time so limited, the purchaser shall, without further action by either party, be deemed to have abandoned his claim upon said premises, and thereupon this contract shall cease to have any force or effect as against said premises, or the title thereto, or any right or interest therein, but not otherwise.

Should said purchaser fail to perform this contract promptly on his part, at the time and in the manner herein specified, the earnest money paid as above, shall, at the option of the vendor, be forfeited as liquidated damages, and this contract shall thereupon become and be null and void. Time is of the essence of this contract, and of all the conditions hereof.

The notices required to be given by the terms of this agreement shall in all cases be construed to mean notices in writing, signed by or on behalf of the party giving the same, and the same may be served either upon the other party or his agent.

This contract and the said earnest money shall be held by ..... for the mutual benefit of the parties concerned, and after the consummation of the sale ..he.. shall be at liberty to retain the canceled contract permanently: and it shall be the duty of said ..... in case said earnest money be forfeited as herein provided, to apply the same, first, to the payment of any expenses incurred for the vendor by his agent in said matter, and second, to the payment to vendor's broker of a commission of ..... per cent on the selling price herein mentioned, for his services in procuring this contract rendering the overplus to the vendor.

WITNESS the hands of the parties hereto, this.....day of .....A. D. 19...

.....  
 .....

REAL ESTATE BOARD SALE CONTRACT—  
COOK CO., ILLS.

Approved by Chicago Real Estate Board

THIS MEMORANDUM WITNESSETH, That ..... hereby agree.. to purchase at the price of (.....) Dollars, the following described real estate, situated in the County of Cook and State of Illinois.....

.....  
Section.....Township.....North, Range.....East of the Third Principal Meridian, and.....

.....  
agree.. to sell said premises at said price, and to convey to said purchaser a good and merchantable title thereto, by.....general Warranty Deed, with release of dower and Homestead rights, but *subject* to: (1) existing leases, expiring.....the purchaser to be entitled to the rents from .....; (2) all taxes and assessments levied after the year 19.....; (3) any unpaid special taxes or special assessments levied for improvements not yet completed and to unpaid installments of special assessments which fall due after.....levied for improvements completed; also subject to any party wall agreements of record; to building line restrictions and building restrictions of record, and to.....

.....  
Premiums on insurance policies held by Mortgagee shall be paid for by said first party pro rata for the unexpired time. Said purchaser has paid (.....) Dollars as earnest money, to be applied on such purchase when consummated, and agrees to pay within five days after the title has been examined and found good, or accepted by him, said insurance premium and the further sum of ..... Dollars, at the office of ..... Chicago, provided a good and sufficient.....general Warranty Deed, conveying to said purchaser a good and merchantable title to said premises (subject as aforesaid), shall then be ready for delivery. The balance to be paid as follows.....

.....  
with interest from the date hereof at the rate of.....per cent per annum, payable semi-annually, to be secured by the purchaser's notes and mortgage, or trust deed, of even date herewith, on said premises, in the form known as the CHICAGO REAL ESTATE BOARD FORM for.....improved property.

A Certificate of Title issued by the Registrar of Titles of Cook County, or complete merchantable Abstract of Title or merchantable copy, brought down to date hereof, or merchantable Title Guaranty Policy made by.....shall be furnished by the vendor within a reasonable time, which abstract shall, upon the consummation of this sale, remain with the vendor, or his assigns, as part of his security, until the deferred installments are fully paid. The purchaser or his attorney if an abstract or copy be furnished shall, within ten days after receiving such abstract, deliver to the vendor or his agent (together with the abstract), a note or memorandum in writing, signed by him or his attorney, specifying in detail the objections he makes to the title, if any; or if none, then stating in substance that the same is satisfactory. In case



material defects be found in said title, and so reported, then, if such defects be not cured within sixty days after such notice thereof, this contract shall, at the purchaser's option become absolutely null and void, and said earnest money shall be returned; notice of such election to be given to the vendor; but the purchaser may nevertheless elect to take such title as it then is, and in such case the vendor shall convey, as above agreed; provided, however, that such purchaser shall have first given a written notice of such election, within ten days after the expiration of the said sixty days, and tendered performance hereof on his part. In default of such notice of election to perform, and accompanying tender, within the time so limited, the purchaser shall, without further action by either party, be deemed to have abandoned his claim upon said premises, and thereupon this contract shall cease to have any force or effect as against said premises, or the title thereto, or any right or interest therein, but not otherwise.

Should said purchaser fail to perform this contract promptly on his part, at the time and in the manner herein specified, the earnest money paid as above, shall, at the option of the vendor be retained by the vendor as liquidated damages, and this contract shall thereupon become and be null and void. Time is of the essence of this contract, and of all the conditions hereof.

The notices required to be given by the terms of this agreement shall in all cases be construed to mean notices in writing, signed by or on behalf of the party giving the same, and the same may be served either upon the other party or his agent.

If the taxes and assessments to be paid by the vendor cannot be paid at time this contract is to be closed then the vendor is to pay same on or before May 1st, next ensuing.

This contract and the said earnest money shall be held by.....for the mutual benefit of the parties concerned, and after the consummation of the sale....he.....shall be at liberty to retain the canceled contract permanently; and it shall be the duty of said.....in case said earnest money be retained as herein provided, to apply the same, first, to the payment of any expenses incurred for the vendor by his agent in said matter, and second, to the payment to vendor's broker of a commission of.....per cent on the selling price herein mentioned, for his services in procuring this contract rendering the overplus to the vendor.

WITNESS the hands of the parties hereto this.....day of.....A. D. 19.....

.....  
.....

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No. 12

## INSTALLMENT HOUSE CONTRACT

AGREEMENT, made this.....day of....., 19....., between  
.....  
hereinafter throughout described as the seller, and

.....

hereinafter throughout described as the purchaser.

WITNESSETH, That the seller agrees to sell and convey, and the pur-

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chaser agrees to purchase all that lot of land with the improvements thereon, situate, lying and being in the....., bounded and described as follows, to wit:—

(DESCRIPTION)

SUBJECT TO:

.....  
The price is ..... Dollars, payable as follows: .....  
Dollars on the signing of this contract, the receipt whereof is hereby acknowledged.

..... Dollars (insert installment terms as, for example: in twelve monthly installments as follows: First installment of THREE HUNDRED (\$300) DOLLARS due the 15th of April, 1920, and thereafter eleven monthly installments at the rate of TWO HUNDRED (\$200) DOLLARS each in addition to interest at the rate of 6% per annum on the unpaid balance of the purchase price; said interest to be computed from the 1st day of April, 1920, first installment of principal and interest on unpaid balance to be paid April 15, 1920, and monthly thereafter.) On receipt of the above payments a deed will be delivered as hereinafter provided.

AT THE TIME OF CLOSING TITLE hereunder the balance of the purchase price then due (.....) shall be made up by first and second mortgages as follows:

THE FIRST MORTGAGE shall be for \$..... and shall bear interest at the rate of 6% per annum and shall run for three years. The seller agrees to procure for the purchaser at the expense of the purchaser (which expense is not to exceed the sum of \$....., which shall include the searching and insurance of title for the amount of \$.....) an acceptance of the above first mortgage, provided the purchaser complies with the usual requirements regarding loans and the purchaser shall pay the usual charges.

THE SECOND MORTGAGE shall be for \$..... and shall be a purchase money mortgage executed and delivered by the purchaser to the seller covering the above described premises bearing interest at the rate of 6% per annum and said mortgage shall be conditioned for the payment of ..... (\$.....) DOLLARS or more monthly in addition to interest at the rate of 6% until said principal sum is fully paid.

IF AT THE TIME OF DELIVERY OF DEED said premises shall be subject to a first mortgage which has not yet become due, the seller shall have the privilege of delivering said premises subject to such existing first mortgage instead of procuring a new first mortgage as above provided. In that event the second mortgage shall be for the difference between the amount of such mortgage and the sum of the first and second mortgages herein stated.

ALL TAXES, ASSESSMENTS, WATER RATES and FIRE INSURANCE PREMIUMS becoming liens on said premises on and after..... are to be assumed by the purchaser who agrees to pay the same as hereinbefore provided within twenty days after such taxes, water rates and fire insurance premiums shall have become liens on the above described premises.

IT IS UNDERSTOOD AND AGREED that should the Purchaser with the written consent of the Seller take possession of said premises prior to the delivery of the deed, such possession shall be as a monthly tenant of the Seller and all moneys theretofore or thereafter paid under this contract and all improvements on the premises shall be the agreed rent of such premises covering the periods during which such payments are made, but deed shall be delivered if payments are made as above provided. Should default be

made in any of such payments and remain in arrears for twenty (20) days, then at the option of the Seller, its successors or assigns, this agreement shall be void and of no effect, excepting as to this paragraph, or the Seller may disregard the provisions of this paragraph and enforce its rights reserved in the remainder of this agreement. The Purchaser shall thereupon pay to the Seller and the Seller shall accept payments required by the terms of this contract on the dates herein specified as and for the agreed rental of such premises covering the time between the dates specified for such payments to be made. Should the Purchaser fail to make any such payments as heretofore required thereupon the Seller shall be entitled to and shall receive the surrender of said premises and the improvements thereon as Landlord of the Purchaser, and the Purchaser hereby agrees that the Seller may institute and maintain legal action or summary proceedings for non-payment of rent in any proper court to obtain such possession and rental sums as against a monthly tenant.

The deed shall be a bargain and sale deed, with covenant against grantor's acts and shall be executed and acknowledged by the seller, at the seller's expense to convey to the purchaser, the absolute fee of the above premises, free from all incumbrances, except as herein stated.

All instruments called for by this contract are to be drawn by the attorney for the seller, and all charges for drawing and recording same, including mortgage tax and revenue stamps, except the drawing of deed and revenue stamps thereon, shall be paid by the purchaser.

In the event that the title to the premises shall prove unmarketable, the only obligation of the seller shall be to refund the purchase money paid on account of this contract and the expense of the examination of title.

Said deed shall be delivered at the office of ..... on ..... at .....  
....M. upon receipt of said payments.

Rents, interest on mortgages, private water rates, and insurance premiums, if any, are to be apportioned.

The risk of loss or damage to said premises by fire to the extent of \$..... until the delivery of said deed is assumed by the seller.

Any gas fixtures and chandeliers now on said premises belonging to the seller are included in this sale.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and successors of the respective parties.

The seller agrees that.....is the broker who has brought about this sale, and agrees to pay said broker his commission therefor.

WITNESS, the corporate seal of the seller and the signature of two of its officers and the hand and seal of the purchaser.

IN PRESENCE OF

.....  
.....  
.....

No. 13

## INSTALLMENT LOT CONTRACT

AGREEMENT, made this.....day of.....nineteen hundred and ....., between ....., hereinafter throughout described as the Seller, and ..... hereinafter throughout described as the Purchaser, residing at .....

WITNESSETH that the Seller agrees to sell and convey, and the Purchaser agrees to purchase ALL that certain lot, piece or parcel of land situate, lying

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and being at ..... in the ....., and known and designated as and by lot Number ..... in block ....., on the map of the property of the Seller entitled ....., together with the right of access over the surface of the street only. The title to the land in such street or courts, lanes or alleys or rights of way is not to be conveyed but shall remain in the Seller, and all franchise rights in the Streets and Avenues shown on said Map are reserved to the seller.

THE PRICE is ..... Dollars, payable as follows: .....  
.....  
Dollars paid on signing this Contract, and .....  
.....  
.....  
.....  
.....

With interest on the unpaid balances from the date of this agreement at the rate of six per cent per annum, payable with each installment as hereinabove provided for.

If any part of said price is to be paid by giving back a purchase money Bond and Mortgage, the Purchaser shall pay the expenses of preparing and recording said Bond and Mortgage and shall pay the mortgage tax, and necessary revenue stamps on the bond.

The Purchaser assumes and will pay any and all taxes and assessments and water rates which may become a lien upon the premises above described after the date of this contract. In case said taxes or assessments are paid by the Seller the Purchaser will, upon demand, repay the amount so paid, together with interest at the rate of six per cent per annum from the date of the payment by the Seller.

The following are the terms and conditions of this contract:

FIRST: The Purchaser agrees to make the payments above mentioned promptly. All payments shall be made to the Seller at its office, No. ...., and only such payments as shall be received for by an authorized representative of the Company shall be recognized by the Seller.

SECOND: Time shall be the essence of this agreement and of all its conditions, and in case the Purchaser shall fail to make said payments, or any of them, when the same shall become due, then this contract shall become null and void, and all rights of the Purchaser under this agreement shall be cancelled, and the amounts paid on this contract shall be forfeited to the Seller at its option and shall remain its property as liquidated damages for failure to fulfill this agreement completely; or at the option of the Seller, the balance due under this contract shall become immediately due and payable.

THIRD: No modification of this agreement in any of its particulars shall be binding upon the Seller unless the same is in writing and duly approved by the seller.

FOURTH: No assignment of this contract shall be recognized without the written consent of the Seller.

FIFTH: The Seller agrees to give and the Purchaser agrees to accept a title such as the ..... Company will approve and insure.

SIXTH: Upon the payment of the above amount set forth in full and when all the terms and conditions of this contract have been complied with by the Purchaser, the Seller will convey to the Purchaser the premises above described by Full Covenant and Warranty Deed free from all encumbrances except as herein stated, and said deed shall also contain the following covenants.

SEVENTH: The covenants to be inserted in the deed of said premises are as follows:

AND the said party of the second part for the party of the second part and the heirs, successors and assigns of the party of the second part does hereby covenant and agree to and with the said party of the first part, its successors and assigns as follows:

1st: That neither the said party of the second part, nor the heirs, successors or assigns of the party of the second part shall or will erect, or cause or suffer to be erected, or use or cause or suffer to be used on any portion of said premises, any building except a dwelling house for one family only, and which building shall not have a roof of the character or description commonly known as a flat roof.

2nd: That neither the said party of the second part nor the heirs, successors or assigns of the party of the second part shall or will erect, or cause or suffer to be erected, or use or cause or suffer to be used, on any portion of said premises, more than one building on each lot of land as said lots are shown and laid out on the map hereinbefore mentioned; and no building or part of building shall cover more than fifty (50) per cent of the area of any of the lots as shown and laid out on the above mentioned map, and no building or structure of any kind or nature shall be erected, suffered or permitted to be erected or used within five feet of building line of any Street, Avenue, Court, Lane or Parkway, nor within five feet of the rear line of any of said lots, nor within three feet of the side lines of any of said lots.

3rd: That neither the said party of the second part nor the heirs, successors or assigns of the party of the second part shall or will manufacture or sell or cause or permit to be manufactured or sold or kept for sale on any portion of the premises hereby conveyed any goods or merchandise of any kind and will not carry on or cause or permit to be carried on, any trade or business whatsoever upon any part of said premises.

4th: That neither the said party of the second part nor the heirs, successors or assigns of the party of the second part shall or will construct or permit upon any portion of said premises any tight board or close built fence whatsoever, nor any fence nearer the street line on which said house fronts than the front wall of the house, excepting that a hedge may be placed in front on the building line, provided, however, that no fence or hedge whatsoever shall be permitted of a greater height than two feet.

5th: That neither the said party of the second part nor the heirs, successors or assigns of the party of the second part shall or will erect, suffer or permit, maintain or carry on upon said premises or any part thereof any slaughterhouse, blacksmith shop, forge, foundry or furnace, or any manufactory or factory of any kind or nature whatsoever, or any tannery or other factory for the manufacture, preparation or treatment of skins, hides or leather, or any brewery, malt house or distillery, or any building or other structure for the manufacture of any malt or spirituous or distilled liquors, or to be used for the carrying on of any noxious, dangerous or offensive trade or business, or any hotel or boarding or community house, or any building to be used as a hospital for the care or treatment of any disease either of persons or animals, or any asylum for the care or treatment of the insane, nor shall said premises be used for a cemetery.

6th: And the party of the second part for the party of the second part and the heirs, successors and assigns of the party of the second part further covenants that the property conveyed by this deed shall be subject to an annual charge in such an amount as will be fixed by the party of the first part, its successors and assigns not, however, exceeding in any year the sum of Four (\$4.00) Dollars per lot as the said lots are shown on map hereinbefore men-

tioned. The assigns of the party of the first part may include a Property Owners' Association which may hereafter be organized for the purposes referred to in this paragraph, and in case such association is organized, the sums in this paragraph provided for shall be payable to such association. The party of the second part for the party of the second part and the heirs, successors and assigns of the party of the second part covenants that they will pay this charge to the party of the first part, its successors and assigns on the first day of May in each and every year, and further covenants that said charge shall on said date in each year become a lien on the land and shall continue to be such lien until fully paid. Such charge shall be payable to the party of the first part or its successors or assigns, and shall be devoted to the maintenance of the roads, paths, parks, sewers, and such other public purposes as shall from time to time be determined by the party of the first part, its successors or assigns. And the party of the second part by the acceptance of this deed hereby expressly vests in the party of the first part, its successors and assigns, the right and power to bring all actions against the owner of the premises hereby conveyed or any part thereof for the collection of such charge and to enforce the aforesaid lien therefor.

7th: These covenants shall run with the land and shall be construed as real covenants running with the land until January 31st, 1930, when they shall cease and determine. Except, however, it is mutually understood and agreed that the above covenants and restrictions or any of them may be altered, modified or annulled at any time prior to said January 31st, 1930, by written agreement by and between the seller, its successors or assigns, and the owner for the time being of the premises upon which it is agreed to alter, modify or annul said covenants and restrictions and such agreement shall be effectual to alter, modify or annul such covenants and restrictions as to such premises without the consent of the owner or owners of any adjacent premises. Nothing herein contained shall be construed, nor shall there be any obligation upon the party of the first part, its successors or assigns, to restrict in any manner any other property shown upon said map now or hereafter owned by the party of the first part, its successors or assigns.

8th: In addition to all sums and items hereinbefore agreed to be paid, the purchaser agrees to pay to the seller, its successors and assigns, an annual charge in such an amount as will be fixed by the seller, or its successors or assigns, not however, exceeding in any year the sum of Four Dollars (\$4.00) per lot as shown on map hereinbefore mentioned. The assigns of the party of the first part may include a Property Owners' Association, which may have been or may hereafter be organized for the purpose referred to in this paragraph, and in case such association is organized, the sums in this paragraph provided for shall be payable to such association. The purchaser covenants and agrees to pay this charge on the first day of May in each and every year from the date of this contract to the date of the delivery of the deed as hereinabove provided, and such annual charge shall be added to and deemed part of the sums required to be paid by this contract. Such annual charge shall be devoted to the maintenance of the roads, paths, parks, sewers, and such other public purposes as shall from time to time be determined by the seller, its successors or assigns.

9th: IT IS UNDERSTOOD AND AGREED that the purchaser is to enter into and take possession of said premises on or about.....as tenant of the seller, and that all monies paid or to be paid on and after the date of this contract and all improvements made on the premises shall be considered as and shall be rent of said premises, for the use and occupancy thereof until delivery of the deed as above provided; and should any default be made in any of the payments as above provided on any day whereon same is made

payable and remain unpaid and in arrears for the space of twenty (20) days, then in that event this agreement shall, at the option of the seller or its legal representatives, become and be void and of no effect, except as to this clause, and the seller shall be entitled to and shall receive full surrender and possession of said premises and the improvements thereon as landlord of the purchaser without further notice; and the purchaser hereby agrees that the seller may begin dispossess proceedings in any court for such possession as against a monthly tenant.

SUBJECT, however, to Building Zone restrictions of the City of New York and any modifications thereof.

.....  
 .....  
 .....  
 The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

IN WITNESS WHEREOF the party of the first part has caused these presents to be signed by one of its officers and its corporate seal to be hereunto affixed and the said party of the second part ha.....hereunto set..... hand.....and seal.....the day and year first above written.

IN PRESENCE OF

.....  
 .....  
 .....  
 No. 14

## CONTRACT TO SELL WITH BUILDING LOAN

AGREEMENT made this ..... day ....., 19..., between ..... hereinafter designated as the seller, and ..... hereinafter designated as the purchaser.

The seller agrees to sell the lot of land described in Schedule A, hereto annexed, and to convey the same to the purchaser by a proper deed for the sum of ..... dollars, and the purchaser agrees to purchase said lot and pay said price therefor as follows:

..... dollars in cash on the execution and delivery of this agreement, receipt whereof is hereby acknowledged. ....

..... dollars by the purchaser executing and delivering to the seller the bond of the purchaser conditioned for the payment of said sum on the ..... day of ....., 19..., with interest thereon at the rate of ..... per cent per annum payable semi-annually, secured by a purchase money mortgage covering said premises, which shall contain the clauses usually employed by the Title Guarantee and Trust Company in its mortgages, and also a clause to the effect that if the purchaser does not proceed with the erection of the building as hereinafter provided, such bond and mortgage and the amount secured thereby shall become due at the option of the holder thereof. The deed shall recite a consideration of one hundred dollars and other valuable consideration.

Said deed and bond and mortgage shall be delivered at the office of the Title Guarantee and Trust Company, ..... Borough of ....., in the City of New York on the ..... day of ....., 19..., at ..... o'clock ...M.

The purchaser agrees within one month of the date hereof to cause to be prepared by a competent architect, plans and specifications conforming with all laws and municipal regulations and satisfactory to the seller for the erection

upon said land of the building described in Schedule B, hereto annexed (hereinafter designated as the building), and after obtaining the seller's approval, continuously to proceed with the erection of said building so that the same will be enclosed within ..... months after the delivery of said deed and completely finished and ready for occupancy within ..... months after said delivery.

The seller agrees that if the purchaser proceeds with the erection of the building as above provided, the seller will loan or procure to be loaned to the purchaser the sum of ..... dollars to be advanced in installments as set forth in Schedule C, hereto annexed, which loan shall be secured by the bond of the purchaser conditioned for the repayment of the amounts so advanced on ....., 19..., with interest thereon at the rate of ..... per cent per annum, payable semi-annually, secured by a mortgage covering said premises, in which the wife of the purchaser, if any, shall join, which shall be a valid lien next after such purchase money mortgage for all sums that may be advanced thereon, subject to no encumbrance, except such as may be waived by the seller, or at the option of the seller or any holder thereof said mortgage, which is hereafter referred to as the building loan mortgage, shall be a first lien on said premises for all sums that may be advanced thereon, and then the purchase money mortgage to be given as hereinbefore provided shall be a second lien on said premises, subject only to said building loan mortgage. The building loan mortgage shall contain the clauses usually employed by the Title Guarantee and Trust Company in its building loan mortgages.

And the parties hereto further agree with each other as follows: that the seller may employ a watchman to protect the building from depredation or injury; that if the construction of said building should be discontinued at any time or should not be carried on with reasonable despatch, the seller may purchase materials and employ workmen to complete or protect said building so that the same will not suffer from depredation or the weather; that if any mechanic's lien or liens should be filed against said premises, the seller may retain or may deposit in behalf of the purchaser, with the Clerk of the County of ..... sums sufficient to satisfy such lien or liens; that if interest should become overdue on any prior mortgage, the seller may pay the same; that if any taxes, assessments or water rates affecting said premises should become due and remain unpaid, the seller may pay the same, and any sums paid or expended in accordance with any of the foregoing clauses shall be deemed to be advanced to the purchaser and to be secured by said bond and building loan mortgage, and may be applied at the option of the seller to any advances thereafter becoming due.

If the purchaser should assign this contract or any interest therein, or assign any right to receive any payment or portion of a payment herein provided for, or give to any person or corporation an order on the seller for the payment of any moneys payable under this agreement, or should convey said premises or any interest therein, or if said premises should become encumbered by any lien or encumbrance, not herein provided for, or if the purchaser should not proceed continuously with the erection and completion of said building (stoppage by reason of actual strikes excepted), or if a petition in bankruptcy should be filed by or against the purchaser, or if default should be made in the payment of interest upon any of the mortgages herein mentioned, or if the building should be materially injured or destroyed by fire or other casualty, or if the plans and specifications should not be satisfactory to the seller, or if said plans should not be approved by the Building Department before an advance is demanded, or if the materials and construction be not satisfactory to the seller, or if any materials, fixtures or articles used in the construction of the building, or appurtenant thereto, should be purchased by the purchaser so that the absolute



ownership thereof would not vest in the purchaser immediately on delivery at said building, or if the purchaser should not produce upon demand, the contracts, bills of sale and agreements, or any of them, under which the purchaser claims title to the materials, fixtures and articles used in the construction of the building and appurtenant thereto, or if the building should materially encroach on property not owned by the purchaser or if there should be at any time any note or notice of any violation of law or of any municipal regulation or ordinance filed in or issued by any public department or authority, whenever, and as often as any such event occurs, all obligation on the part of the seller or the holder of said building loan mortgage to make or procure any further advances shall cease if the seller so elect, and the said building loan mortgage debt shall become due and payable at the option of the seller or of the holder of said building loan mortgage, anything in said bond or building loan mortgage contained to the contrary notwithstanding; but the holder of said building loan mortgage may make advances thereafter without becoming liable to make any other advances, and without thereby waiving the right to demand payment of said mortgage debt. Said building loan mortgage may contain the foregoing provisions or any of them, but the omission of any of said provisions shall not be a waiver of any of them.

Whenever required, the purchaser shall deliver to the holder of said building loan mortgage, as further security for the building loan, a chattel mortgage duly executed, covering all articles of personal property and fixtures appurtenant to the building.

In case any dispute arise between the parties hereto as to any matter as to character and quality of materials or labor or of construction of building under this contract, each party shall select an architect, and the decision of the two architects so selected shall be final and binding on both parties. If the two architects cannot agree, then they shall select a third, and his decision shall be final and binding on both parties.

All advances are to be made at the office of.....  
 .....  
 and the purchaser is to give the seller three days' notice before demanding any advance.

During the construction of the building, the seller and the holder of said building loan mortgage and the seller's architects or inspectors may from time to time inspect the building.

No advance shall be due unless all work usually done at the stage of construction when the advance is payable under the terms of Schedule "C" be done in a good and workmanlike manner, and all materials and fixtures usually furnished and installed at that time be furnished and installed, and all iron work and construction be approved by an engineer satisfactory to the seller nor if in the opinion of the seller the advance will make the total amount then owing hereunder greater than the value of the improvements then on the premises, but parts or the whole of any installments may be advanced before they become due if the seller or holder of said building loan mortgage believe it advisable to do so, and all such advances or payments shall be deemed to have been made in pursuance of this agreement.

The making of any advance or any part of an advance, shall not be deemed an approval or acceptance by the seller or the holder of said building loan mortgage of the work theretofore done.

The purchaser shall procure the building loan mortgage to be recorded and shall pay the expense of the examination of title, and for the searches which may be required by the seller to assure the seller that the building loan mortgage is a lien as herein covenanted, and the purchaser shall furnish surveys made by the surveyor, satisfactory to the holder of said building loan mort-

## 238 REAL ESTATE PRINCIPLES AND PRACTICES

gage whenever required by the holder as a condition of the making of an advance.

So much of the building loan herein agreed to be made as may be required, may be applied by the seller to the payments, satisfaction or other disposition of any existing mortgage or mortgages or other incumbrances on the premises described on Schedule "A," and such moneys shall be so applied toward such payment or other disposition of mortgages or other incumbrances, whenever the seller may so select; and so much of said building loan as may be necessary may be applied under the direction of the purchaser to the payment of any fees, brokerage or other expenses incident to the obtaining or making of the building loan herein agreed to be made.

In case the building be one to which the provisions of the Tenement House Act apply,

(a) The first advance shall not be due until the plans and specifications shall have been approved by the Tenement House Department, and a written certificate to that effect shall have been issued by such Department.

(b) No other advance shall be due unless the building shall comply with the provisions of the Tenement House Act, so far as such Act then may be applicable.

(c) The last advance shall not be due until the purchaser shall produce a certificate issued by the Tenement House Department, that said building conforms, in all respects, to the requirements of said Act.

So much of the last advance as may be necessary may be applied to the payment of accrued interest on any mortgage mentioned in this contract.

The seller or holder of said building loan mortgage may release portions of the mortgaged premises at any time upon receiving what, in the opinion of the seller, is a proper payment on account of the mortgage debt.

The seller or any holder of said building loan bond and mortgage may extend the payment of the principal secured by said bond and mortgage, and any extension so granted shall be deemed made in pursuance of this agreement and not to be a modification thereof.

Payments of the amounts to be secured by the bonds to be given hereunder are to be guaranteed by .....

IN WITNESS WHEREOF, the parties hereto have signed and sealed these presents the day and year first above written.

.....[L. S.]

.....[L. S.]

.....[L. S.]

### (ACKNOWLEDGMENTS)

#### SCHEDULE A

Annexed hereto and forming a part of the foregoing agreement.  
(Description of property sold.)

#### SCHEDULE B

Annexed hereto and forming a part of the foregoing agreement.  
(Description of building to be erected)

#### SCHEDULE C

Annexed hereto and forming a part of the foregoing agreement.  
(At what time and in what amounts advances on mortgage are to be made.)

No. 15

## ACKNOWLEDGMENT—NEW YORK

BY INDIVIDUAL

STATE OF NEW YORK }  
 County of..... } ss.:

On this ..... day of ....., in the year ..... before me came .....,  
 to me known to be the person described in, and who executed the foregoing  
 instrument, and acknowledged that he executed the same.

.....  
 Notary Public,

..... County, No. ....

No. 16

## ACKNOWLEDGMENT—NEW YORK

BY A CORPORATION

STATE OF NEW YORK }  
 County of..... } ss.:

On this ..... day of ..... in the year ..... before me came .....,  
 to me known, who, being by me duly sworn, did depose and say that he resides  
 in .....; that he is the ..... of the ....., the corporation de-  
 scribed in and which executed the above instrument; that he knows the seal of  
 said corporation; that the seal affixed to said instrument is such corporate seal;  
 that it was so affixed by order of the board of directors of said corporation, and  
 that he signed his name thereto by like order.

.....  
 Notary Public,

..... County, No. ....

No. 17

## ACKNOWLEDGMENT—NEW YORK

BY SUBSCRIBING WITNESS

STATE OF NEW YORK }  
 County of..... } ss.:

On this ..... day of ..... before me came ..... the subscribing  
 witness to the foregoing instrument, with whom I am personally acquainted,  
 who, being by me duly sworn, did depose and say, that he resided, at the time  
 of the execution of said instrument, and still resides in .....; that he is  
 and then was acquainted with ..... and knew ..... to be the individual  
 described in, and who executed the foregoing instrument; and that he, said  
 subscribing witness, was present and saw him execute the same; and that he,  
 said witness, at the same time subscribed his name as witness thereto.

.....  
 Notary Public,

..... County, No. ....

No. 18

**ACKNOWLEDGMENT—NEW YORK**

BY FIRM BY ONE PARTNER

STATE OF NEW YORK }  
 County of..... } ss.:

On this ..... day of ....., before me came ....., to me known to be a member of the firm of ..... and the person described in and who executed the foregoing instrument in the firm name of ..... and acknowledged that he executed the same as the act and deed of said firm of .....

.....  
 Notary Public,

..... County, No. ....

No. 19

**ACKNOWLEDGMENT—NEW YORK**

BY HUSBAND AND WIFE KNOWN TO THE OFFICER

STATE OF NEW YORK }  
 County of..... } ss.:

On this ..... day of ....., before me came ..... and ....., his wife, severally known to me to be the persons described in, and who executed the foregoing instrument, and acknowledged that they executed the same.

.....  
 Notary Public,

..... County, No. ....

No. 20

**ACKNOWLEDGMENT BY ATTORNEY IN FACT—  
NEW YORK**

STATE OF NEW YORK }  
 County of..... } ss.:

On the ..... day of ....., nineteen hundred and ....., before me came ..... to me known to be the attorney in fact of ..... the individual described in and by ..h.. said attorney in fact executed the foregoing instrument, and duly acknowledged that ..h.. executed the same as the act and deed of ..... therein described, and for the purpose therein mentioned, by virtue of a power of attorney duly executed by the said ..... dated ..... and recorded in the office of the Register of the County of ..... on ..... in Liber ..... of Powers of Attorney, page .....

.....  
 Notary Public.

## No. 21

## ACKNOWLEDGMENT—NEW JERSEY

HUSBAND AND WIFE

STATE OF NEW JERSEY }  
 County of..... } ss.:

BE IT REMEMBERED, that on this ..... day of ....., in the year of our Lord, one thousand nine hundred and ..... before me, ..... personally appeared ..... and ....., his wife, who, I am satisfied ..... the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and they thereupon ..... acknowledged that ..... signed, sealed and delivered the same as ..... voluntary act and deed, for the uses and purposes therein expressed.

(SEAL)

.....  
 Commissioner for the State of New Jersey.

## No. 22

## ACKNOWLEDGMENT—OHIO

THE STATE OF..... }  
 .....COUNTY. } ss.:

BE IT REMEMBERED, that on this....day of.....A. D. 19.. before me, the subscriber, a ..... in and for said county, personally came the above named person ..... the Grantor in the foregoing deed, and acknowledged the signing of the same to be ..... voluntary act and deed for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

.....  
 Notary Public.

## No. 23

## ACKNOWLEDGMENT—MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS }  
 ..... } ss.:

.....19....  
 Then personally appeared the above named ..... and acknowledged the foregoing instrument to be ..... free act and deed, before me.

.....  
 Justice of the Peace.

My commission expires .....19....

No. 24

**ACKNOWLEDGMENT—CALIFORNIA**

STATE OF CALIFORNIA } ss.:  
COUNTY OF..... }

On this ..... day of ..... in the year 19... before me, ..... a Notary Public in and for said county, personally appeared ..... known to me to be the person.. whose name.. ..... subscribed to the within instrument and ..he.. acknowledged to me that ..he.. executed the same.

No. 25

.....  
Notary Public.**ACKNOWLEDGMENT—ILLINOIS**

STATE OF..... } ss.:  
COUNTY OF..... }

I, ....., a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ..... personally known to me to be the same person.. whose name.. .... subscribed to the.... foregoing instrument, appeared before me this day in person and acknowledged that ..... signed, sealed and delivered the said instrument as ..... free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

GIVEN under my hand and notarial seal, this day of ..... A. D. 19....

No. 26

.....  
Notary Public.**ACKNOWLEDGMENT—PENNSYLVANIA**

STATE OF PENNSYLVANIA } ss.:  
COUNTY OF..... }

ON THE ..... day of ..... Anno Domini 19..., before me, the subscriber, ..... personally appeared the above-named ..... and in due form of law acknowledged the above Indenture to be ..... act and deed, and desired the same might be ..... recorded as such.

WITNESS my hand and ..... seal the day and year aforesaid.

No. 27

.....  
Notary Public.**ACKNOWLEDGMENT BEFORE CONSULAR OFFICER**

UNITED STATES CONSULATE GENERAL } ss.:  
..... }

I, ....., Consul-..... of the United States of America, ....., duly commissioned, and qualified, do certify that on this ..... day of 192.., before me personally appeared in said ....., to me known, and known

to me to be the individual described in, whose name is subscribed to, and who executed the foregoing instrument, and being by me informed of the contents of said instrument ..... duly acknowledged to me that ..... executed the same freely, and voluntarily for the uses, and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and Official Seal the day, and year last above written.

.....  
 Consul-..... of the  
 United States of America at  
 .....

No. 28

## ACKNOWLEDGMENT BEFORE FOREIGN COMMISSIONER

REPUBLIC OF FRANCE, }  
 ..... } ss.:

BE IT REMEMBERED, that on this....day of....., 192., at the..... aforesaid, before me ....., Commissioner for the State of ....., residing in said ....., personally came, ....., to me known to be the individual described in and who executed the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my Official Seal the day and year last above written.

.....  
 Commissioner for the State of .....

No. 29

## COUNTY CLERK'S CERTIFICATE

STATE OF ..... }  
 County of ..... } ss.:

I, ....., Clerk of the County of ....., and also Clerk of the Supreme Court for said County (said Court being a Court of Record), DO HEREBY CERTIFY that ....., whose name is subscribed to the certificate of proof, acknowledgment or deposition of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment, a NOTARY PUBLIC of the State of ..... in and for said County of ....., dwelling in said County, commissioned and sworn and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to said Certificate is genuine, and that the said instrument is executed and acknowledged according to the laws of the State of .....

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said County and Court, this ..... day of ....., 19....

..... Clerk.

## SPECIMENS OF AUCTION ADVERTISEMENTS

The following are specimens of auction sale advertising used by some of the most successful auctioneers.

HOME-SEEKERS, BUILDERS and INVESTORS  
Don't miss this opportunity to buy Home  
Sites at your own price. Attend the

**To-MORROW**  
At 2 P. M. on the property.  
Rain or shine, in mammoth tent.

**400 New York City LOTS**  
Bellaire MANOR, Bellaire Long Island  
Hollis Avenue, at the head of First Avenue, running from  
Colfax Avenue to 213th Street  
Only 30 Minutes from PENN. STA., L.I.R.R.  
Bellaire Station only two blocks from property.

**BRYAN L. KENNELLY,**  
Real Estate Auctioneer  
149 Broadway, N. Y.

Court. 1547

REAL ESTATE AT AUCTION. REAL ESTATE AT AUCTION.

**Featherstone Farms**  
1,500 Acres  
Stock and Equipment  
At Absolute Auction  
Featherstone, Va.  
July 18, 19 and 20  
Beginning at 10 A. M. Each Day

The Featherstone Farms, containing 1,500 acres, located on the W. & O. Railroad and the Washington and Richmond Highway, one hour's ride from Washington, D. C., Station on farm.

**July 18**—The land will be sold in tracts ranging from 1 to 350 acres. It is an excellent farming land, well watered and especially adapted to the profitable growth of corn, wheat, clover, small grains and fruits. The tracts contain beautiful home sites, with water front, overlooking the Potomac River. Five minutes to railway station.

**IMPROVEMENTS**—Wandown residence, seven cottages, three greenhouses and feed barns, three dairy barns, six cow houses, garage, laundry, electric light system and complete water works. All buildings modern in all respects.

**July 19** One of the best herds of pure bred, registered Holsteins in the South, most of them with records, under Federal and State supervision—clean and right.

**July 20** \$10,000 worth of implements and equipment. Every article included in a well-equipped, up-to-date farm. Nothing reserved.

Everything, including the 1,500-acre estate, fifty-four head of registered Holsteins and all equipment, will be sold regardless of price. Take advantage of this opportunity.

For further information address either of the following: This office, 315 Connecticut Avenue, Washington, D. C.; Lewis Adams, Featherstone, Va., or Frank R. Chambers, Owner, Featherstone, Va.

**LOUISVILLE REAL ESTATE & DEVELOPMENT CO.**  
D. C. Clarke, President, Sales Agent,  
LOUISVILLE, KY.

1921  
REAL ESTATE AT AUCTION.

**AUCTION SALE**  
On premises, August 2nd, 10 A. M., on  
Bellaire, Long Island, N. Y.

**ZARRISKE HOUSE**  
Bellaire, Long Island, N. Y.  
An exceptional, newly constructed, 12-room dwelling, with modern appointments, including a swimming pool, tennis court, and a large garage. The house is situated on a beautiful lot, with a view of the ocean. The price is \$10,000.00. The house is a real gem and a rare opportunity to own a piece of the coast.

**SECOND FLOOR**—Master's room, bath, dressing room, two bedrooms, a servant's room, a large hall, and a central hall.

**FIRST FLOOR**—Living room, dining room, kitchen, breakfast room, and a large hall.

**BATH**—A large, modern bath with a hot water heater and a central heating system.

**CARAGE**—A large, modern carage with a central heating system and a hot water heater.

**OPPORTUNITY**—An opportunity to purchase a piece of the coast at a low price. The house is a real gem and a rare opportunity to own a piece of the coast.

**DEBLOIS & ELDRIDGE**  
152 Broadway Avenue, New York, N. Y.



**Who Wouldn't Pay \$2.50  
for \$10 Gold Pieces?**

Well, that is practically what  
hundreds did last Saturday,  
in spite of the heat, when

**Bennett Estate Lots sold  
for as low as \$50 each**

THINK OF IT — one of the highest and finest  
properties in Westchester County, in Yonkers, just  
over the New York City line, sold for \$50 to \$750  
a lot. Some of the best lots remain to be sold at the  
Continuation Absolute Auction Sale, for whatever  
they may bring.

**TO-DAY...GO TO THE**  
**James Gordon Bennett Estate**

Take Interborough Brooklyn Ave. subway (Jerome Ave. train) to WOOD-  
LAWN TERMINAL STATION, and change to Central Ave. trolley. Get  
off at property, at intersection of Central Ave. and Yonkers Ave. From  
Yonkers or Mount Vernon take Yonkers Ave. trolley to Central Ave.

**CONTINUATION  
Absolute Executors' Auction Sale**

By Order of Rudolph W. Bennett, Sec. and  
Quincy Trust Co. of New York, Executors

at 2 P. M., rain or shine, on the premises, under main  
motel tent, Cor. YONKERS and CENTRAL AVES.

**ALL THE REMAINING UNSOLD  
YONKERS BUNGALOW LOTS**

TO BE SOLD SEPARATELY  
ON YONKERS AVE., CENTRAL (JEROME) AVE. and  
Midland, Cook, Seminary, Bennett and adjacent Aves.

**\$5 Secured a \$50 Lot  
\$10 Secured a \$100 Lot  
\$15 Secured a \$150 Lot**

10% on Day of Sale—10% in Thirty Days  
80% In Monthly Installments of 2%  
3% at 6%—60% at 14%—50% at 5% may remain on mortgage

Westchester Title & Mortgage Company Policies Free.

Earl's Best Books, on ground assign-  
ment, as well as Liberty Bonds at mar-  
ket value, accept of no deposit.

*Infant Day*  
Auctioneer

67 Liberty St.  
Cortlandt 0744

**HAVE YOU \$10?**

\$10 Secures a \$100 Lot

**HAVE YOU \$20?**

\$20 Secures a \$200 Lot

**HAVE YOU \$30?**

\$30 Secures a \$300 Lot

10% Day of Sale—10% in 30 days—Balance in Monthly Payments of 2%

**New York City Bungalow Lots**

**775 EAST BRONX BUNGALOW LOTS**

Opposite Bruce Brown & Coster Estates

on East Tremont Ave., East 177th St.

Lafayette, Barkley, Phillip Ave. and Adjoining Streets

**Absolute Auction Sale**

To the Highest Bidder for Whatever They May Bring

Order of The Title Guarantee & Trust Co., Trustees

**TO-MORROW**

2 P. M. RAIN OR SHINE, under mammoth tent

on premises, corner East Tremont and Barkley Aves.

70% @ 6%—60% @ 8 1/4%—80% @ 5%

MAY REMAIN ON MORTGAGE

Guarantee & Trust Co. Policies free to purchasers.

THE REGISTERED MASTER, Attorney, 44 Wall St., New York City

Property TO-DAY.

Jerome Avenue subway

Station, 10th Avenue, then

East Avenue (Fort

St.) trolley to East-

ern or East or West

to 177th Street

then East Tre-

mont to Eastern

Earl's Best Books, on ground assign-  
ment, as well as Liberty Bonds at mar-  
ket value, will be accepted at a de-  
posit.

SEND FOR BOOKMAP

*Infant Day*  
Auctioneer

67 Liberty St. Cortlandt 0744



No. 36

## DEED—NEW JERSEY

**THIS DEED**, made this ..... day of ....., in the year One Thousand Nine Hundred and .....

**BETWEEN** ....., of the ..... of ....., in the County of ....., and State of ....., of the First Part;

And ....., of the ..... of ....., in the County of ....., and State of ....., of the Second Part:

**WITNESSETH**, That the said Part.. of the First Part, for and in consideration of the sum of ..... lawful money of the United States of America,

..... to ..... in hand paid by the said Part.. of the Second Part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said Part.. of the ..... Part, ..... heirs, executors, and administrators, forever released and discharged from the same, ha.. granted, bargained and sold, and by these presents do ..... grant, bargain, sell and convey unto the said Part.. of the Second Part, and to, ..... heirs and assigns forever,

**ALL** ..... certain lot., tract., and parcel.. of land and premises, hereinafter more particularly described, situate, lying and being in the ..... of ..... County of ....., and State of New Jersey. ....

**TOGETHER**, with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof;

**AND ALSO**, all the estate, right, title, interest, ..... property, possession, claim and demand whatsoever, as well in law as in equity, of the said Part.. of the First Part, of, in, and to the same, and every part and parcel thereof, with the appurtenances;

**TO HAVE AND TO HOLD**, the above granted, bargained and described premises, with the appurtenances, unto the said Part.. of the Second Part, ..... heirs and assigns, to ..... own proper use, benefit and behoof forever.

**AND THE SAID** Part.. of the First Part ..... for ..... heirs, executors and administrators do..... covenant, grant and agree to and with the said Part.. of the Second Part, ..... heirs and assigns, that the said Part.. of the First Part ..... at the time of the sealing and delivery of these presents, ..... lawfully seized ..... of a good, absolute and indefeasible estate of inheritance, in fee simple, of, in, and to all and singular the above granted and described premises, with the appurtenances, ..... and ha.. good right, full power and lawful authority to grant, bargain, sell and convey the same in manner aforesaid;

**AND** that the said Part.. of the Second Part, ..... heirs and assigns, shall and may, at all times hereafter, peacefully and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said Part.. of the First Part, ..... heirs or assigns, or of any other person or persons lawfully claiming, or to claim the same;

AND that at time of the sealing and delivery of these presents, the said premises are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance, whatsoever, by which the title of the said Part.. of the Second Part, hereby made or intended to be made, for the same, can or may be changed, charged, altered or defeated in any way whatsoever;

AND ALSO, that the said Part.. of the First Part, and ..... heirs, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for ..... shall and will, at any time or times hereafter, upon the reasonable request of the said Part.. of the Second Part, .....heirs and assigns, but at the proper cost and charges in the law of the said Part.. of the First Part, ..... heirs, executors and administrators, make, do and execute, or cause to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said Part.. of the Second Part, ..... heirs and assigns, forever, as by the said Part.. of the Second Part, ..... heirs or assigns, or ..... counsel learned in the law, shall be reasonably advised or required;

AND ALSO, that ..... will WARRANT, SECURE AND FOREVER DEFEND the said land and premises unto the said ..... heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, and from all manner of encumbrances whatsoever.

IN WITNESS WHEREOF, the said Part.. of the First Part ha.. hereunto set ..... hand.. and seal.. the day and year first above written.

Signed, Sealed and Delivered  
in the presence of

.....  
.....

(ACKNOWLEDGMENT)

No. 31

WARRANTY DEED—CALIFORNIA

THIS INDENTURE, made the ..... day of ..... in the year of our Lord one thousand nine hundred and .....

BETWEEN .....

.....  
..... the part.. of the second part, WITNESSETH: That the said part.. of the first part for and in consideration of the sum of ..... dollars, ..... of the United States of America, to ..... in hand paid by the said part.. of the second part, the receipt whereof is hereby acknowledged, do.. by these presents grant, bargain, sell, convey and confirm unto the said part.. of the second part, and to ..... heirs and assigns forever .....

.....  
.....  
TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof;

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises together with the appurtenances unto the said part.. of the second part, and to ..... heirs and assigns forever. And the said part.. of the first part, and ..... heirs, the said premises in the quiet and peaceable possession of the said part.. of the second part, ..... heirs and assigns, against the said part.. of the first part, and ..... heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will WARRANT, and by these presents forever DEFEND.

IN WITNESS WHEREOF, the said part.. of the first part ha.. hereunto set ..... hand.. and seal.. the day and year first above written.

Signed, Sealed and Delivered  
in the presence of

.....[L. S.]

.....[L. S.]

(ACKNOWLEDGMENT)

No. 32

## FEE SIMPLE DEED—PENNSYLVANIA

THIS INDENTURE, made the ..... day of ..... in the year of our Lord nineteen hundred and .....

BETWEEN ..... of the second part:  
WITNESSETH, That the said part.. of the first part, for and in consideration of the sum of ..... Dollars, lawful money of the United States of America, well and truly paid by the said part.. of the second part to the said part.. of the first part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, ..... granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do.. grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said part.. of the second part, ..... heirs and assigns.

ALL .....

TOGETHER with all and singular the tenements, hereditaments and appurtenances to the same belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rent, issues, and profits thereof; AND ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, both in law and equity, of the said part.. of the first part, of, in, to or out of the said premises, and every part and parcel thereof.....

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said part.. of the second part, ..... heirs and assigns, to and for the only proper use and behoof of the said part.. of the second part, ..... heirs and assigns forever, .....

AND the said ..... heirs, executors and administrators, do.. by these presents, covenant, grant and agree to and with the said part.. of the second part, ..... heirs and assigns, that the said ..... heirs all and singular the hereditaments and premises hereinabove described and granted or mentioned, and intended so to be, with the appurtenances, unto the said part.. of the second part, ..... heirs and assigns, against the said part.. of the first

part and ..... heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same or any part thereof, ..... shall and will by these presents WARRANT AND FOREVER DEFEND.

IN WITNESS WHEREOF, the said part.. of the first part ha.. hereunto set ..... hand.. and seal.. the day and year first above written.

Signed, sealed and delivered .....	[L. S.]
in the presence of us: .....	[L. S.]
.....	[L. S.]
.....	[L. S.]
.....	[L. S.]
.....	[L. S.]

RECEIVED the day of the date of the within or foregoing Indenture, of the said part.. of the second part, the sum of .....

WITNESS

.....	.....
.....	.....

(ACKNOWLEDGMENT)

No. 33

## WARRANTY DEED—MASSACHUSETTS

KNOW ALL MEN BY THESE PRESENTS that ..... in consideration of ..... paid by ..... the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said ....., all .....

TO HAVE AND TO HOLD the granted premises, with all the privileges and appurtenances thereto belonging, to the said ..... and ..... heirs and assigns, to their own use and behoof forever.

AND ..... hereby for ..... and ..... heirs, executors, and administrators, COVENANT with the grantee.. and ..... heirs and assigns, that ..... lawfully seized in fee-simple of the granted premises; that they are free from all incumbrances; that ..... have good right to sell and convey the same as aforesaid; and that ..... will and ..... heirs, executors, and administrators shall WARRANT AND DEFEND the same to the grantee.. and .... heirs and assigns forever against the lawful claims and demands of all persons.

AND for the consideration aforesaid ..... do hereby release unto the said grantee.. and ..... heirs and assigns all right of or to both DOWER AND HOMESTEAD in the granted premises, and all other rights and interests therein.

IN WITNESS WHEREOF ..... the said ..... hereunto set ..... hand.. and seal.. this ..... day of ..... in the year one thousand nine hundred and .....

Signed and sealed in the presence of

.....	.....
.....	.....
.....	.....

(ACKNOWLEDGMENT)

No. 34

**DEED, STATUTE FORM—MASSACHUSETTS**

.....  
 .....  
 of ....., ..... County, Massachusetts, being unmarried, for considera-  
 tion paid, grant to ..... of ..... with WARRANTY COVE-  
 NANTS ..... the land in .....  
 (Description and encumbrances, if any)

..... wife of said grantor ..... release to said grantee all rights of  
 dower and homestead and other interests therein.

WITNESS ..... hand.. and seal.. this ..... day of ..... 19....

**(ACKNOWLEDGMENT)**

(The following is not a part of the deed, and is not to be recorded.)

**EXTRACT FROM CHAPTER 502, SECTION 2, ACTS OF 1912.**

Every deed in substance in the above form, when duly executed, shall have the force and effect of a deed in fee simple to the grantee, his heirs and assigns, to his and their own use, with covenants on the part of the grantor for himself, his heirs, executors, administrators and successors, with the grantee, his heirs, successors and assigns, that at the time of the delivery of such deed, (1) he was lawfully seized in fee simple of the granted premises, (2) that the granted premises were free from all encumbrances, (3) that he had good right to sell and convey the same to the grantee and his heirs and assigns, and (4) that he will and his heirs, executors and administrators shall warrant and defend the same to the grantee and his heirs and assigns against the lawful claims and demands of all persons.

No. 35

**WARRANTY DEED—OHIO**

KNOW ALL MEN BY THESE PRESENTS: .....

.....  
 of the ..... of ....., County of ..... and State of ....., in con-  
 sideration of the sum of ..... Dollars, to ..... paid by ..... of  
 the ..... of ....., County of ..... and State of ....., the receipt  
 whereof is hereby acknowledged, do.. hereby GRANT, BARGAIN, SELL AND  
 CONVEY to the said ....., h.. heirs and assigns forever, the following  
 REAL ESTATE, situated in the County of ..... in the State of .....,  
 and in the ..... of ..... and bounded and described as follows:

.....  
 .....  
 .....

## 252 REAL ESTATE PRINCIPLES AND PRACTICES

TO HAVE AND TO HOLD said premises, with all the privileges and appurtenances thereunto belonging, to the said ....., h.. heirs and assigns forever.

And the said ..... for ..... and ..... heirs do.. hereby covenant with the said ....., h.. heirs and assigns, that ..... lawfully seized of the premises aforesaid; that the said premises are **FREE AND CLEAR FROM ALL INCUMBRANCES WHATSOEVER.**

and that ..... will forever **WARRANT AND DEFEND** the same, with the appurtenances unto the said ....., h.. heirs and assigns against the lawful claims of all persons whatsoever .....

IN WITNESS WHEREOF, The said ..... who hereby release ..... right of dower in the premises, h.. hereunto set ..... hand., this ..... day of ....., 19.., .....

Signed and acknowledged in  
presence of

.....  
.....

(ACKNOWLEDGMENT)

No. 36

### EXAMPLES OF RESTRICTIVE COVENANTS

That neither the said party of the second part nor the heirs, successors or assigns of the party of the second part shall or will erect, suffer or permit, maintain or carry on upon said premises or any part thereof any slaughter house, blacksmith shop, forge, foundry or furnace, or any manufactory or factory of any kind or nature whatsoever, or any tannery or other factory for the manufacture, preparation or treatment of skins, hides or leather, or any brewery, malt house or distillery, or any building or other structure for the manufacture of any malt or spirituous or distilled liquors, or to be used for the carrying on of any noxious, dangerous or offensive trade or business, or any hotel or boarding or community house, or any building to be used as a hospital for the care or treatment of any disease either of persons or animals, or any asylum for the care or treatment of the insane, nor shall said premises be used for a cemetery.

That neither the said party of the second part nor the heirs, successors or assigns of the party of the second part shall or will erect, or cause or suffer to be erected, or use or cause or suffer to be used on any portion of said premises any building except a dwelling house for one family only, which building shall cost to erect, at least Three thousand (\$3,000) Dollars, and which building shall not have a roof of the character or description commonly known as a flat roof.

That neither the said party of the second part, nor the heirs, successors or assigns of the party of the second part shall or will erect or cause or suffer to be erected, or use or cause or suffer to be used on any portion of said premises more than one building on each plot of land, at least ..... feet front and rear by 100 feet in depth on each side; and no building or structure of any kind or nature shall be erected, suffered or permitted to be erected or used within 15 feet of the building line of any Street, Avenue or Parkway, nor



within 15 feet of the rear line of any of said plots, nor within ..... feet of the side lines of said plot. This covenant as to a set back shall not apply to front or side or rear steps, side porches or piazzas, cornices, bay or oriel windows, upon houses erected in accordance with the above restrictions.

That neither the said party of the second part nor the heirs, successors or assigns of the party of the second part shall or will manufacture or sell or cause or permit to be manufactured or sold or kept for sale on any portion of the premises hereby conveyed any goods or merchandise of any kind and will not carry on or cause or permit to be carried on, any trade or business whatsoever upon any part of said premises.

That neither the said party of the second part nor the heirs, successors or assigns of the party of the second part shall or will construct or permit upon any portion of said premises any tight board or close built fence whatsoever, nor any fence nearer the street line on which said house fronts than the front wall of the house, excepting that a hedge may be placed in front on the building line, provided, however, that no fence or hedge whatsoever shall be permitted of a greater height than four feet.

And the party of the second part for the party of the second part and the heirs, successors and assigns of the party of the second part further covenants that the property conveyed by this deed shall be subject to an annual charge in such an amount as will be fixed by the party of the first part, its successors and assigns not, however, exceeding in any year the sum of Four (\$4.00) Dollars per lot 20 x 100 feet. The assigns of the party of the first part may include a Property Owners' Association which may hereafter be organized for the purposes referred to in this paragraph, and in case such association is organized, the sums in this paragraph provided for shall be payable to such association. The party of the second part for the party of the second part and the heirs, successors and assigns of the party of the second part covenants that they will pay this charge to the party of the first part, its successors and assigns on the first day of May in each and every year, and further covenants that said charge shall on said date in each year become a lien on the land and shall continue to be such lien until fully paid. Such charge shall be payable to the party of the first part or its successors or assigns, and shall be devoted to the maintenance of the roads, paths, parks, beach, sewers, and such other public purposes as shall from time to time be determined by the party of the first part, its successors or assigns. And the party of the second part by the acceptance of this deed hereby expressly vests in the party of the first part, its successors and assigns, the right and power to bring all actions against the owner of the premises hereby conveyed or any part thereof for the collection of such charge and to enforce the aforesaid lien therefor.

These covenants shall run with the land and shall be construed as real covenants running with the land until January 31st, 1940, when they shall cease and determine. Except, however, it is mutually understood and agreed that the above covenants and restrictions or any of them may be altered, modified or annulled at any time prior to said January 31st, 1940, by written agreement by and between the Neponsit Realty Company, its successors or assigns, and the owner for the time being of the premises upon which it is agreed to alter, modify or annul said covenants and restrictions and such agreement shall be effectual to alter, modify or annul such covenants and restrictions as to such premises without the consent of the owner or owners of any adjacent premises. Nothing herein contained shall be construed, nor shall there be any obligation upon the party of the first part, its successors or assigns, to restrict in any manner any other property shown upon said map now or hereafter owned by the party of the first part, its successors or assigns.

**MORTGAGE—NEW JERSEY**

**THIS INDENTURE**, made the ..... day of ....., in the year one thousand nine hundred and .....

**BETWEEN** ..... party of the first part and ..... part.. of the second part;

**WHEREAS**, the said ..... justly indebted to the said part.. of the second part in the sum of ..... dollars, lawful money of the United States of America, secured to be paid by ..... certain bond or obligation, bearing even date with these presents, in the penal sum of ..... dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of ..... dollars, lawful money as aforesaid, to the said part.. of the second part, ..... or assigns, on the ..... day of ..... which will be in the year one thousand nine hundred and ..... and interest thereon, to be computed from the ..... day of ..... one thousand nine hundred and..... at and after the rate of ..... per cent per annum, and to be paid .....

**AND IT IS HEREBY EXPRESSLY AGREED**, that should any default be made in the payment of the said interest ..... or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest ..... remain unpaid and in arrear for the space of ..... or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of ..... then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of ..... with all arrearage of interest thereon, shall, at the option of the said part.. of the second part or ..... legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding; as by said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

**NOW THIS INDENTURE WITNESSETH**, that the said part.. of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to ..... in hand paid by the said part.. of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha.. granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do.. grant, bargain, sell, alien, release, convey and confirm, unto the said part.. of the second part, and to ..... forever, **ALL** .....

**TOGETHER** with all and singular tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof:

**AND ALSO** all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said part.. of the first part, of, in and to the same and every part and parcel thereof, with the

appurtenances, TO HAVE AND TO HOLD the above granted and described premises, with the appurtenances, unto the said part.. of the second part,..... assigns to ..... own proper use, benefits and behoof forever.

PROVIDED ALWAYS, and these presents are upon this express condition, that if the said part.. of the first part,..heirs, executors or administrators, shall well and truly pay unto the said part.. of the second part,.... or assigns the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and times and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

AND THE SAID ..... for ..... heirs, executors and administrators, do.. covenant and agree to pay unto the said part.. of the second part, ..... or assigns, the said sum of money and interest, as mentioned above and expressed in the condition of the said bond.

AND IT IS ALSO AGREED by and between the parties to these presents, that the said part.. of the first part shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said part.. of the second part ..... or assigns, and assign the policy and certificates thereof to the said part.. of the second part; and in default thereof, it shall be lawful for the said part.. of the second part to effect such insurance, and the premium or premiums, paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand with interest at the rate of ..... per cent per annum, from time of payment of such premium or premiums.

AND THE SAID ..... the owner of the lands above described, for ..... heirs and assigns, do.. further covenant and agree to and with the said part.. of the second part, ..... and assigns, that ..... they will not hereafter apply for any deduction by reason of any mortgage from the taxable value of the lands embraced in this mortgage. AND IT IS FURTHER AGREED, that in case the said owner ..... heirs or assigns, shall claim any deduction from the taxable value of the said lands in violation of this agreement, then and in that case this mortgage shall become and be immediately due and payable, and the amount of tax paid by the mortgagee.. shall be added to the principal of the debt secured hereby and recoverable therewith, with interest thereon from the time of payment.

IN WITNESS WHEREOF, the said part.. of the first part ha.. hereto set ..... hand and seal.. the day and year first above written.

SEALED AND DELIVERED IN THE PRESENCE OF

.....  
(ACKNOWLEDGMENT)

No. 38

## MORTGAGE—CALIFORNIA

THIS MORTGAGE, Made the ..... day of ..... in the year nineteen hundred and ..... by ..... Mortgagor., to ..... Mortgagee..., WITNESSETH: That the Mortgagor.. mortgage.. to the Mortgagee.. all that real property situate in the ....., County of ..... State of California, and known, designated and described as .....

Together with all the improvements thereon, and the hereditaments and appurtenances thereunto belonging, and the rents, issues and profits thereof, as security for the payment to said Mortgagee.. of a certain promissory note, in the words and figures following:

\$....., California, .....19...  
 ..... after date, for value received ..... promise to pay to  
 ..... or order, ..... Dollars, in gold coin of the present standard  
 of value, with interest thereon from date until paid, at the rate of ..... per  
 cent per ..... in like coin, payable ..... and if not so paid, the interest  
 may be added to the principal and bear like interest, and the whole note may  
 at the option of the holder.., without notice to the maker.. thereof, be treated  
 as due and collectible. Both principal and interest to be paid at the office of  
 .....

.....  
 ..... and also to secure all other indebtedness that may hereafter, during the con-  
 tinuance of this mortgage, be due, owing or existing from said Mortgagor..  
 to said Mortgagee .....

AND IT IS HEREBY FURTHER AGREED, That the Mortgagor.. shall  
 and will keep the improvements upon the mortgaged premises insured for  
 ..... and will have such insurance made payable to the mortgagee.. as  
 additional security for the payment of the note aforesaid; and in default of  
 keeping said improvements insured as aforesaid, then said Mortgagee.. may  
 cause the same to be insured at the expense of said Mortgagor..; and that  
 the Mortgagor.. will, on demand, repay to the Mortgagee.., in gold coin,  
 all moneys paid by the Mortgagee.. to obtain said insurance; and also all sums  
 paid by the Mortgagee.., to discharge any tax or assessment on said premises,  
 or the improvements thereon, not chargeable against the Mortgagee.. under  
 the Constitution and laws of said State, which payments the Mortgagee.. hereby  
 authorized to make, and that this mortgage shall stand as security for the  
 repayment to the Mortgagee.. of all sums which ..... shall have paid for  
 the purposes aforesaid, together with interest thereon, from the date of the  
 payment thereof, at the rate of twelve per cent per annum, until repayment is  
 made to the Mortgagee.., and in case it shall become necessary to defend or  
 intervene to protect the title to said property, or the right to the possession  
 thereof, or the right or lien of this mortgage, in any action of ejectment, suit  
 for partition, or to foreclose a lien, or any other legal proceeding whatsoever,  
 the said Mortgagee.. or ..... assigns may take charge and control of such  
 intervention or defense, and this mortgage shall stand as security for the re-  
 payment of all moneys expended in such defense or intervention, for counsel  
 fees or otherwise, together with interest thereon at the rate of twelve per cent  
 per annum.

And in case default be made in the payment of said note, or any installment  
 thereof or of any interest due thereon, then the Mortgagee.. may, at .....  
 option and without notice to the Mortgagor.. at once proceed to foreclose this  
 mortgage, and in any such proceeding to foreclose ..... shall be allowed a  
 reasonable and just sum, to be fixed by the Court, with which to pay the attor-  
 neys' and counsel fees in such foreclosure proceeding, in gold coin; which sum  
 shall be secured by this mortgage and shall become due upon the filing of the  
 complaint; and upon filing of such complaint in such foreclosure proceedings,  
 or at any time thereafter, the Court shall, if requested by the plaintiff.., name  
 some disinterested person as Receiver, and shall authorize such Receiver to  
 at once take possession of the mortgaged premises and collect the rents and  
 profits thereof, and apply them to the satisfaction of such judgment, and to  
 sell said premises in the same manner as lands are sold upon execution, and  
 to continue in the use and possession of said premises, and to collect the rents

and profits thereof, until the premises are redeemed from such sale, or until title is vested in the purchaser, by the execution of a conveyance in pursuance of the sale.

IN WITNESS WHEREOF, the said Mortgageor.. ha.. hereunto set ..... hand.. and seal.. the day and year first herein written.

.....[L. S.]

.....[L. S.]

.....[L. S.]

.....[L. S.]

(ACKNOWLEDGMENT)

No. 39

## MORTGAGE—PENNSYLVANIA

THIS INDENTURE, made the ..... day of ..... in the year of our Lord one thousand nine hundred and ..... (19...) BETWEEN ..... (hereinafter called the Mortgagor..) of the one part, and ..... (hereinafter called the Mortgagee..), of the other part:

WHEREAS, the said Mortgagor., in and by ..... Obligation.. or Writing.. obligatory under .... hand.. and seal.. duly executed, bearing even date herewith, stand ..... bound unto the said Mortgagee.. in the sum of ..... lawful money of the United States of America, conditioned for the payment of the just sum of ..... lawful money as aforesaid, together with interest thereon, ..... payable ..... at the rate of .... per cent per annum, without any fraud or further delay, and for the production to the Mortgagee.. Executors, Administrators ..... or Assigns, on or before the ..... day of ..... of each and every year, of receipts for ..... all taxes and water rents of the current year assessed upon the mortgaged premises, and also, from time to time, and at all times, until payment of said principal sum, for the keeping of the building ..... mentioned in this Mortgage insured against loss or damage by fire for the benefit of the Mortgagee.. in the sum of .....

PROVIDED, HOWEVER, and it is thereby expressly agreed, that, if at any time default shall be made in the payment of interest as aforesaid for the space of ..... days after any ..... payment thereof shall fall due, ..... or in such production to the Mortgagee., Executors, Administrators ..... or Assigns, on or before the ..... day of ..... of each and every year, of such receipts for ..... taxes and water rents of the current year assessed upon the premises mortgaged, or in the maintenance of such insurance, then and in such case the whole principal debt aforesaid ..... shall, at the option of the said Mortgagee ..... Executors, Administrators ..... or Assigns, become due and payable immediately, and payment of said principal debt ..... and all interest thereon, may be enforced and recovered at once, anything therein contained to the contrary notwithstanding. AND PROVIDED FURTHER, however, and it is thereby expressly agreed, that if at any time thereafter, by reason of any default in payment, either of said principal sum ..... at maturity, or of said interest, or in the production of said receipts ..... for taxes and water rents within the time specified, or in the maintenance of such insurance, a writ of *Fieri Facias* is properly issued upon the judgment obtained upon said Obligation, or by virtue of said Warrant of Attorney, or a writ of *Scire Facias* is issued upon this Indenture of Mortgage,

an attorney's commission for collection, viz.: ..... per cent, shall be payable, and shall be recovered in addition to all principal and interest then due, besides costs of suit, and all expenses of effecting such insurance, as in and by the said recited Obligation.. and the Condition.. thereof, relation being thereunto had, may more fully and at large appear.

NOW THIS INDENTURE WITNESSETH, That the said Mortgagor.., as well for and in consideration of the aforesaid debt or principal sum of ..... and for the better securing the payment of the same, with interest, unto the said Mortgagee.., Executors, Administrators, ..... and Assigns, in discharge of the said recited Obligation.., as for and in consideration of the further sum of One Dollar unto ..... in hand well and truly paid by the said Mortgage.. at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, ..... granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents ..... grant, bargain, sell, alien, enfeoff, release and confirm unto the said Mortgagee ..... and Assigns,

TOGETHER with all and singular ..... Ways, Waters, Water-Courses, Rights, Liberties, Privileges, Improvements Hereditaments and Appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the Reversions and Remainders, Rents, Issues and Profits thereof.

TO HAVE AND TO HOLD the said ..... Hereditaments and Premises hereby granted, or mentioned and intended to be so, with the Appurtenances, ..... unto the said Mortgagee ..... and Assigns, to and for the only proper use and behoof of the said Mortgagee ..... and Assigns forever. And the said Mortgagor.. for ..... Heirs, Executors and Administrators, do.. hereby covenant, promise and agree, to and with the said Mortgagee..., Executors, Administrators, ..... and Assigns, that if the said Mortgagor..... Heirs, Executors or Administrators, shall neglect or refuse to keep up the aforesaid insurance, it shall be lawful for the said Mortgagee ..... Executors, Administrators ..... or Assigns, to insure the said building ..... in a sum sufficient to secure payment of the said principal debt in case of fire, and all costs and expenses of effecting such insurance shall be treated as part of the principal debt in a suit upon this Mortgage.

PROVIDED ALWAYS, nevertheless, that if the said Mortgagor..... Heirs, Executors, Administrators or Assigns, shall and do well and truly pay, or cause to be paid, unto the said Mortgagee ..... Executors, Administrators ..... or Assigns, the aforesaid debt or principal sum of ..... on the ..... day.. and time.. hereinbefore mentioned and appointed for payment of the same, together with interest as aforesaid, and shall produce to the said Mortgagee.. ..... Executors, Administrators ..... or Assigns, on or before the ..... day of ..... of each and every year, receipts for all ..... taxes and water rents of the current year assessed upon the premises mortgaged, without any fraud or further delay, and without any deduction, defalcation or abatement to be made of anything, herein mentioned to be paid or done, and shall keep the building ..... mentioned in this Mortgage insured as aforesaid, then, and from thenceforth, as well this present INDENTURE, and the estate hereby granted, as the said recited Obligation.. shall cease, determine and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. AND PROVIDED, ALSO, that it shall and may be lawful for the said Mortgagee..... Executors, Administrators ..... or Assigns, when as soon as the principal debt or sum hereby secured shall become due and payable as aforesaid, or in case default shall be made for the space of ..... days in the payment of interest on the said principal sum ..... after any ..... payment thereof shall fall due, ..... or in case there shall be default in the production to the said Mortgagee..... Executors, Administrators ..... or Assigns, on or before the ..... day

of ..... each and every year, of such receipts for ..... taxes and water rents of the current year assessed upon the premises mortgaged, or in the maintenance of the insurance as aforesaid, to sue out forthwith a writ or writs of *Scire Facias* upon this Indenture of Mortgage, and to proceed thereon to judgment and execution for the recovery of the whole of said principal debt, ..... and all interest due thereon, together with an attorney's commission for collection, viz.: ..... per cent, besides costs of suit, and all expenses of effecting such insurance, without further stay, any law, usage or custom to the contrary notwithstanding.

IN WITNESS WHEREOF, the said Mortgagor.. to these presents ..... hereunto set ..... hand.. and seal.. Dated the day and year first above written.

SEALED AND DELIVERED

in the presence of us

..... [L. S.]  
 ..... [L. S.]

(ACKNOWLEDGMENT)

No. 40

## TRUST DEED—ILLINOIS

THIS INDENTURE Made this ..... day of ..... A. D. 19..., between ..... of the ..... of ....., County of ..... and State of ..... party of the first part, and ..... of the ..... of ....., County of ..... and State of ....., party of the second part, as trustee,

WITNESSETH, THAT WHEREAS, the said ..... justly indebted upon ..... principal note.. in the sum of ..... dollars, due ..... with interest at the rate of ..... per cent per annum, payable semi-annually, as evidenced by ..... interest note.., due ....., all of said notes bearing even date herewith and being payable to the order of ..... at the office of ..... or such other place as the legal holder.. thereof may in writing appoint, in gold coin of the United States of the present standard of weight and fineness, and bearing interest after maturity at the rate of seven per cent per annum.

Each of said notes is identified by the certificate of the trustee thereon endorsed.

NOW, THEREFORE, the said party of the first part, for the better securing of the said indebtedness as by the said note.. evidenced, and the performance of the covenants and agreements herein contained on ..... part to be performed, and also in consideration of the sum of ONE DOLLAR in hand paid, does CONVEY AND WARRANT unto the said party of the second part, ..... successor in trust, the following described real estate situate in the County of ..... and State of ..... to wit:

.....  
 .....  
 .....  
 Together with all the tenements, hereditaments and appurtenances thereunto belonging and the rents, issues and profits thereof and all gas and electric fixtures, engines, boilers, furnaces, ranges, heating and lifting apparatus and all fixtures now in or that shall hereafter be placed in any building now or hereafter standing on said land, and all the estate, right, title and interest of the said party of the first part of, in and to said land, hereby expressly releas-

ing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois; TO HAVE AND TO HOLD the same unto the said party of the second part, ..... successor in trust, FOREVER, for the uses and purposes, and upon the trusts herein set forth.

And the said party of the first part does covenant and agree as follows To pay said indebtedness and the interest thereon as herein and in said notes provided; to pay all taxes and assessments levied on said premises as and when the same shall become due and payable and to keep all buildings at any time situated on said premises in good repair and to suffer no lien of mechanics or material men, or other claim, to attach to said premises; to pay all water taxes thereon as and when the same shall become due and payable and neither to do, nor suffer to be done, anything whereby the security hereby effected or intended so to be shall be weakened, diminished or impaired; to keep all buildings which may at any time be situated upon said premises insured in a company or companies to be approved by the party of the second part or ..... successor.. in trust, or the legal holder.. of said note.., against loss or damage by fire for the full insurable value of such buildings for an amount not less than the amount of the indebtedness secured hereby and to cause such insurance policies, with the usual mortgage clause attached or other sufficient endorsement, to be deposited with said party of the second part as additional security hereunder and upon failure to so secure and deposit such insurance policies, said second party ..... successor.. in trust, or the legal holder of said note.., is hereby authorized to procure the same, and all moneys which may be advanced by said party of the second part, or ..... successor in trust, or by the legal holder.. of said note.., or any of them, for the aforesaid purposes, or any of them, or to remove encumbrances upon said premises or in any manner protect the title or estate hereby conveyed, or expended in or about any suit or proceedings in relation thereto, including attorneys' and solicitors' fees, shall with interest thereon at seven per cent per annum, become so much additional indebtedness secured hereby; but nothing herein contained shall render it obligatory upon said party of the second part, or ..... successor.. in trust, or the legal holder.. of said note.., or any of them, to so advance or pay any such sums as aforesaid.

In the event of a breach of any of the aforesaid covenants or agreements, or in case of default in payment of any note.. secured hereby, or in case of default in the payment of one of the installments of interest thereon, and such default shall continue for thirty (30) days after such installment becomes due and payable, then at the election of the holder.. of said note or notes or any of them, the said principal sum together with the accrued interest thereon shall at once become due and payable; such election being made at any time after the expiration of said thirty (30) days without notice, and thereupon the legal holder.. of said indebtedness, or any part thereof, or said trustee, or ..... successor.. in trust, shall have the right immediately to foreclose this trust deed and upon the filing of a bill for that purpose, the court in which such bill is filed, may at once and without notice appoint a receiver to take possession or charge of said premises free and clear of all homestead rights or interests, with power to collect the rents, issues and profits thereof, during the pendency of such foreclosure suit and until the time to redeem the same from any sale made under any decree foreclosing this trust deed shall expire, and in case proceedings shall be instituted for the foreclosure of this trust deed, all expenses and disbursements paid or incurred in behalf of the complainant, including reasonable solicitors' fees, outlays for documentary evidence, stenographers' charges, costs of procuring a complete abstract of title, showing the whole title to said premises, embracing such foreclosure decree, shall be paid by the said party of the first part, and such fees, expenses and disbursements



shall be so much additional indebtedness secured hereby and shall be included in any decree entered in such proceedings for the foreclosure of this trust deed, and such proceedings shall not be dismissed or a release hereof given until all such fees, expenses and disbursements and all the cost of such proceedings have been paid and out of the proceeds of any sale of said premises that may be made under such decree of foreclosure of this trust deed, there shall be paid, First: all the cost of such suit, including advertising, sale and conveyance, attorneys', solicitors', stenographers' and trustees' fees, outlays for documentary evidence and costs of such abstract and examination of title. Second: All moneys advanced by the party of the second part or the legal holder.. of said note.., or any of them for any other purpose authorized in this trust deed, with interest on such advances at seven per cent per annum. Third: All the accrued interest remaining unpaid on the indebtedness hereby secured. Fourth: All of said principal sum remaining unpaid. The overplus of the proceeds of sale shall then be paid to said party of the first part or to his legal representatives or assigns on reasonable request.

In case of the default of the payment of the indebtedness secured hereby or the breach of any of the covenants and agreements entered into on the part of the party of the first part, said party of the first part hereby waives all right to the possession, income and rents of said premises, and it thereupon shall be lawful for the party of the second part, ..... successor.. in trust, to enter into and upon and take possession of said premises and to let the same and receive and collect all rents, issues and profits thereof.

AND THE SAID PARTY OF THE FIRST PART further agrees that in case of a foreclosure decree and sale of said premises thereunder, all policies of insurance provided for herein may be re-written or otherwise changed so that the interest of the owner of the master's certificate of sale, under such foreclosure, shall be protected to the same extent and in like manner as the interest of the legal holder.. of the note.. herein described is protected by such policies.

Upon full payment of the indebtedness aforesaid and the performance of the covenants and agreements hereinbefore made by the said party of the first part, a reconveyance of said premises shall be made by the said trustees, or ..... successor.. in trust ..... legal representatives, to said party of the first part upon receiving ..... reasonable charge therefor, and in case of the death, resignation, absence or removal from said ..... County, or other inability to act of said trustee, when ..... action hereunder may be required by any person entitled thereto, then ..... is hereby appointed and made successor.. in trust herein, with like power and authority as is hereby vested in said trustee.

"Legal holder" referred to herein shall include the legal holder or holders, owner or owners of said note or notes, or indebtedness, or any part thereof, or of said master's certificate of sale and all the covenants and agreements of the said party of the first part herein shall extend to and be binding upon ..... or ..... heirs, executors, administrators or other legal representatives and assigns.

.....  
 .....  
 .....

WITNESS the hand.. and seal.. of the said party of the first part, the day and year first above written.

.....[SEAL]

.....[SEAL]

(ACKNOWLEDGMENT)

## MORTGAGE—ILLINOIS

THIS INDENTURE WITNESSETH, That the Mortgagor ..... of the ..... in the County of ..... and State of ..... MORTGAGE.. and WARRANT.. to ..... of the ..... County of ..... and State of ..... to secure the payment of ..... certain promissory note.. executed by ..... bearing even date herewith, payable to the order .....

the following described Real Estate, to-wit: .....

situated in the County of ..... in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois, and all right to retain possession of said premises after any default in payment or breach of any of the covenants or agreements herein contained.

BUT IT IS EXPRESSLY PROVIDED AND AGREED, That if default be made in the payment of the said ..... promissory note.., or of any part thereof or the interest thereon, or any part thereof at the time and in the manner above specified for the payment thereof, or in case of waste or non-payment of taxes or assessments on said premises, or of a breach of any of the covenants or agreements herein contained, then and in such case, the whole of said principal sum and interest, secured by the said ..... promissory note.. in this Mortgage mentioned, shall thereupon, at the option of the said Mortgagee ..... heirs, executors, administrators, attorneys or assigns, become immediately due and payable: And this Mortgage may be immediately foreclosed to pay the same by said Mortgagee ..... heirs, executors, administrators, attorneys or assigns: And it shall be lawful for the said Mortgagee ..... his heirs, executors, administrators, attorneys or assigns, to enter into and upon the premises hereby granted, or any part thereof, and to receive and collect all rents, issues and profits thereof.

UPON The filing of any bill to foreclose this Mortgage in any Court having jurisdiction thereof, such Court may appoint ..... or any proper person receiver, with power to collect the rents, issues and profits arising out of said premises during the pendency of such foreclosure suit, and until the time to redeem the same from any sale that may be made under any decree foreclosing this Mortgage shall expire, and such rents, issues and profits, when collected, may be applied toward the payment of the indebtedness and costs herein mentioned and described. And upon the foreclosure and sale of said premises, there shall be first paid out of the proceeds of such sale all expenses of advertisements, selling and conveying said premises, and ..... dollars attorneys' or solicitors' fees, to be included in the decree, and all moneys advanced for taxes, assessments and other liens, then there shall be paid the principal of said note.., whether due and payable by the terms thereof or not, and the interest thereon.

DATED This ..... day of ..... A. D. 19...

.....[SEAL]

.....[SEAL]

(ACKNOWLEDGMENT)

No. 42

## MORTGAGE—OHIO

KNOW ALL MEN BY THESE PRESENTS:

That ..... of the County of ..... and State of ..... in consideration of the sum of ..... dollars, to ..... paid by ..... the receipt whereof is hereby acknowledged, do.. hereby GRANT, BARGAIN, SELL AND CONVEY to the said ..... heirs and assigns forever, the following described Real Estate, situate in the County of ..... in the State of ..... and in the ..... and bounded and described as follows, viz.:

.....  
 .....  
 .....  
 and all the Estate, Title and Interest of the said grantor ..... either in Law or in Equity, of, in and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof; to have and to hold the same to the only proper use of the said grantee ..... heirs and assigns forever, and the said ..... for ..... and for ..... heirs, executors and administrators, do.. hereby covenant with the said grantee., ..... heirs and assigns, that ..... the true and lawful owner.. of the said premises, and ha.. full power to convey the same, that the title, so conveyed, is clear, free and unincumbered; and further, that ..... will warrant and defend the same against all claim or claims of all persons whomsoever.

Provided, Nevertheless, that .....

It is agreed between the parties hereto that said mortgagors shall and will keep the building or buildings erected and to be erected upon the premises above described, fully insured against loss by Fire and Tornado, in such Companies and for such amounts as said mortgages and assigns shall approve, and shall cause to be indorsed on such policy or policies of insurance "loss if any, payable to ..... as his mortgage interest may appear" and shall deliver the same to said mortgagee and assigns to be held as collateral security hereto; and in default thereof it shall be lawful for said mortgagee or assigns to effect such insurance, as mortgagee or otherwise, and the premium or premiums paid for effecting and continuing the same shall be a further lien on said mortgaged premises added to the amount of said note secured by these presents, and payable on demand with 8 per cent interest.

Then these presents shall be void; otherwise to be and remain in full force and virtue.

IN WITNESS WHEREOF, the said ..... hereby release ..... right and expectancy of dower in said premises, ha.. hereunto set ..... hand.. this ..... day of ..... in the year of our Lord, one thousand nine hundred and .....

Signed and acknowledged in presence of us:

.....  
 .....

.....  
 .....

(ACKNOWLEDGMENT)

## MORTGAGE, STATUTE FORM—MASSACHUSETTS

..... County, Massachusetts, being unmarried, for consideration paid  
 grant to ..... of ..... with mortgage covenants, to secure the payment  
 of ..... dollars ..... in ..... years with ..... per centum interest  
 per annum payable semi-annually ..... as provided in ..... note.. of  
 even date, ..... the land in .....  
 (Description and encumbrances, if any)

.....  
 .....  
 .....  
 THIS MORTGAGE IS UPON THE STATUTORY CONDITION,  
 .....

.....  
 for any breach of which the mortgagee shall have the statutory power of sale.  
 ..... wife of said mortgagor ..... release to the mortgagee all  
 rights of dower and homestead and other interests in the mortgaged premises.

WITNESS ..... hand.. and seal.. this ..... day of ..... 19....

## (ACKNOWLEDGMENT)

(The following is not a part of the mortgage, and is not to be recorded.)

## EXTRACT FROM CHAPTER 502, SECTION 6, ACTS OF 1912.

Every mortgage in substance in the above form, when duly executed, shall have the force and effect of a mortgage deed to the use of the mortgagee and his heirs and assigns, with mortgage covenants as defined in section eighteen of this act, to secure the payment of the money or the performance of any obligation therein specified;

## (CONDITION)

*Provided, nevertheless,* except as otherwise specifically stated in the mortgage, that if the mortgagor, or his heirs, executors, administrators, or assigns shall pay unto the mortgagee or his executors, administrators or assigns the principal and interest secured by the mortgage, and shall perform any obligation secured, at the time provided in the note, mortgage or other instrument or any extension thereof, and shall perform the condition of any prior mortgage, and until such payment and performance shall pay when due and payable all taxes, charges and assessments, to whomsoever and whenever laid or assessed, whether on the mortgaged premises or on any interest therein, or on the debt or obligation secured thereby; shall keep the buildings on said premises insured against fire in a sum not less than the amount secured by the mortgage, or as otherwise provided therein for insurance, for the benefit of the mortgagee and his executors, administrators and assigns in such form and at such insurance offices as they shall approve, and at least two days before the expiration of any policy on said premises, shall deliver to him or them, a new and sufficient policy to take the place of the one so expiring; and shall not commit or suffer any strip or waste of the mortgaged premises, or any breach of any covenant contained in the mortgage or in any prior mortgage; then the mortgage deed, as also the mortgage note or notes, shall be void.

## (POWER)

But upon any default in the performance or observance of the foregoing or other condition, the mortgagee or his executors, administrators, successors or assigns may sell the mortgaged premises or such portion thereof as may remain subject to the mortgage in case of any partial release thereof, either as a whole or in parcels, together with all improvements that may be thereon, by public auction on or near the premises, or at such place as may be designated for that purpose in the mortgage, first complying with the terms of the mortgage and with the statutes relating to the foreclosure of mortgages by the exercise of a power of sale, and may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee-simple; and such sale shall forever bar the mortgagor and all persons claiming under him from all right and interest in the mortgaged premises, whether at law or in equity.

The foregoing "condition" shall be known as the *Statutory Condition*, and may be incorporated in any mortgage by reference.

The foregoing "power" shall be known as the *Statutory Power of Sale*, and may be incorporated in any mortgage by reference.

The parties may insert in such mortgage any lawful agreement or condition.

## No. 44

## MORTGAGE—MASSACHUSETTS

KNOW ALL MEN BY THESE PRESENTS that ..... in consideration of ..... paid by ..... the receipt whereof is hereby acknowledged, do hereby give, grant bargain, sell and convey unto the said ....., all .....

TO HAVE AND TO HOLD the granted premises, with all the privileges and appurtenances thereto belonging, to the said ..... and ..... heirs and assigns, to their own use and behoof forever.

And ..... hereby for ..... and ..... heirs, executors and administrators, COVENANT with the grantee and ..... heirs and assigns that ..... lawfully seized in fee simple of the granted premises, that they are free from all incumbrances ..... that ..... have good right to sell and convey the same as aforesaid; and that ..... will and ..... heirs, executors, and administrators shall WARRANT AND DEFEND the same to the grantee and ..... heirs and assigns forever against the lawful claims and demands of all persons. ....

PROVIDED NEVERTHELESS that if ....., or ..... heirs, executors, administrators, or assigns shall pay unto the grantee., or ..... executors, administrators, or assigns, the sum of ..... in ..... years from this date, with interest semi-annually at the rate of ..... per cent per annum, and until such payment shall pay all taxes and assessments, to whomsoever laid or assessed, whether on the granted premises or on any interest therein, or on the debt secured hereby; shall keep the buildings on said premises insured against fire in a sum not less than ..... dollars, for the benefit of the grantee, and ..... executors, administrators, and assigns, in such form and at such insurance offices as they shall approve; and, at least two days before the expiration of

any policy on said premises, shall deliver to ..... or them a new and sufficient policy to take the place of the one so expiring; and shall not commit or suffer any strip or waste of the granted premises, or any breach of any covenant herein contained; then this deed, as also ..... note of even date herewith, signed by ..... whereby ..... promise to pay to the grantee., or order, the said principal sum and installments of interest at the time aforesaid, shall be void.

BUT UPON ANY DEFAULT in the performance or observance of the foregoing condition, the grantee., or ..... executors, administrators, or assigns, may SELL the granted premises, or such portion thereof as may remain subject to this mortgage in case of any partial release hereof, together with all improvements that may be thereon, by public auction in said ..... first publishing a notice of the time and place of sale once each week for three successive weeks in some one newspaper published in said ....., the first publication of such notice to be not less than twenty-one days before the day of sale, and may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and such sale shall forever bar ..... and all persons claiming under ..... from all right and interest in the granted premises, whether at law or in equity. And out of money arising from such sale the grantee or ..... representatives shall be entitled to retain all sums then secured by this deed, whether then or thereafter payable, including all costs, charges, and expenses incurred or sustained by them by reason of any default in the performance or observance of the said condition, rendering the surplus, if any, to ..... or ..... heirs, or assigns; and ..... hereby, for ..... and ..... heirs and assigns, covenant with the grantee and ..... heirs, executors, administrators, and assigns that, in case a sale shall be made under the foregoing power ..... or they will upon request execute, acknowledge, and deliver to the purchaser or purchasers a deed or deeds of release confirming such sale, and said grantee.. and ..... assigns are hereby appointed and constituted the attorney or attorneys irrevocable of the said grantor.. to execute and deliver to the said purchaser a full transfer of all policies of insurance on the buildings upon the land covered by this mortgage at the time of such sale.

AND IT IS AGREED that the grantee., or ..... executors, administrators, or assigns, or any person or persons in their behalf, may purchase at any sale made as aforesaid, and that no other purchaser shall be answerable for the application of the purchase money; and that, until default in the performance or observance of the condition of this deed, ..... and ..... heirs and assigns may hold and enjoy the granted premises and receive the rents and profits thereof.

And for the consideration aforesaid ..... do hereby release unto the said grantee and ..... heirs and assigns all right of or to both DOWER and HOMESTEAD in the granted premises, and all rights by statutes and all other rights therein.

IN WITNESS WHEREOF ..... the said ..... hereunto set ..... hand and seal this ..... day of ..... in the year one thousand nine hundred and .....

Signed and sealed in presence of  
.....  
.....

.....  
.....

## MORTGAGE—NEW YORK (OLD FORM)

THIS INDENTURE, made the ..... day of ..... in the year nineteen hundred and ..... between ..... hereinafter described as party of the first part, and ..... his wife, and ..... hereinafter described as party of the second part.

WHEREAS, the said ..... by virtue of a certain bond or obligation bearing even date herewith, ..... justly indebted to the said party of the second part in the sum of ..... dollars, lawful money of the United States, secured to be paid, together with the interest thereon, at the time and in the manner expressed in said bond or obligation.

IT BEING EXPRESSLY AGREED, that the whole of the principal sum shall become due after default in the payment of interest, taxes, or assessments, as hereinafter provided.

NOW THIS INDENTURE WITNESSETH, that the party of the first part, for the better securing the payment of the sum of money mentioned in the said bond or obligation, with the interest thereon, and also for and in consideration of one dollar paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby grant and release unto the party of the second part, and to ..... and assigns forever, all .....

TOGETHER with the appurtenances, and all the estate and rights of the party of the first part, in and to said premises, TO HAVE AND TO HOLD the above granted premises unto the party of the second part, ..... and assigns forever. PROVIDED ALWAYS, that if the party of the first part or the heirs, executors, or administrators of the party of the first part, shall pay unto the party of the second part, ..... or assigns, the said sum of money mentioned in the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said bond or obligation, that then these presents and the estate hereby granted, shall cease, determine and be void.

AND the party of the first part covenants with the party of the second part as follows:

FIRST. That the party of the first part will pay the indebtedness as provided in this mortgage and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises herein described, according to law. Said premises may be sold in one parcel, any provision of law to the contrary notwithstanding.

SECOND. That the party of the first part will keep the building on the said premises insured against loss by fire for the benefit of the party of the second part. Should the party of the second part by reason of such insurance against loss by fire, as aforesaid, receive any sum or sums of money, such amount may be retained and applied by the party of the second part toward the payment of the sum hereby secured, or the same may be paid over either wholly or in part to the party of the first part, .... or assigns, to enable the party of the first part to repair said buildings or to erect new buildings in their place, or for any other purpose or object satisfactory to the party of the second part, without affecting the lien of his mortgage for the full amount secured thereby before such damage by fire, or such payment over, took place.

**THIRD.** And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of the party of the second part after default in the payment of any tax or assessment for thirty days, or after default in the payment of any tax or assessment for thirty days after notice and demand, or after default for thirty days after notice and demand in the payment of any installment of any assessment for local improvements heretofore or hereafter laid which is or may become payable in annual installments, and which has affected, now affects or hereafter may affect the said premises, notwithstanding that such installment be not due and payable at the time of such notice and demand; and also, that the whole of the said principal sum shall become due at the option of the party of the second part upon any default in keeping the buildings on the premises insured against loss by fire as required by paragraph marked "second" above, or if after application by any holder of this mortgage to two or more fire insurance companies lawfully doing business in the State of New York, and issuing policies upon real property situate in the place where the mortgaged premises are situate, the companies to which such application has been made shall refuse to issue such policies.

**FOURTH.** That the holder of this mortgage, in any action to foreclose it, shall be entitled, without notice and without regard to the adequacy of any security for the debt, to the appointment of a receiver of the rents and profits of said premises; and in the event of any default or defaults in paying said principal or interest, such rents and profits are hereby assigned to the holder of this mortgage as further security for the payment of said indebtedness.

**FIFTH.** That until the amount hereby secured is paid, the party of the first part will pay all taxes, assessments and water rates which may be assessed or become liens on said premises, and, in default thereof, the holder of this mortgage may pay the same, and the party of the first part will repay the same with interest, and the same shall be liens on said premises and secured by this mortgage.

**SIXTH.** In the event of the passage after the date of this mortgage of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for State or local purposes, or the manner of the collection of any such taxes, so far as to affect this mortgage, the holder of this mortgage, and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of said land requiring the payment of the mortgage debt, and it is hereby agreed that if such notice be given, the said debt shall become due, payable and collectible at the expiration of said thirty days.

**SEVENTH.** That the mailing of a written notice or demand by depositing it in any post office, station or letter box, enclosed in a post-paid envelope addressed to the owner of record of said mortgaged premises and directed to such owner at the last address actually furnished to the holder of this mortgage, or, if no such address has been furnished, then to such record owner at the mortgaged premises, shall be sufficient notice and demand in any case arising under this instrument.

**EIGHTH.** That the party of the first part will execute any further necessary assurance of the title to said premises, and will forever warrant said title.

**NINTH.** The party of the first part, and any subsequent owner of the premises described herein, upon request, made either personally or by mail, shall certify, by a writing duly acknowledged, to the party of the second part or to any proposed assignee of this mortgage, the amount of principal and interest then owing on this mortgage and whether any offsets or defences exist against the mortgage debt; upon failure to furnish such certificate after the expiration



of six days in case the request is made personally, or after the expiration of thirty days after the mailing of such request in case the request is made by mail, this mortgage shall become due at the option of the holder thereof.

**TENTH.** If any action or proceeding be commenced by any person other than the holder of this mortgage (except an action to foreclose this mortgage or to collect the debt secured thereby) to which action or proceeding the holder of this mortgage is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the holder of this mortgage for the expense of any litigation to prosecute or defend the rights and liens created by this mortgage (including reasonable counsel fees), shall be paid by the party of the first part, together with interest thereon at the rate of six per cent per annum, and any such sum and the interest hereon shall be a lien on said premises, prior to any right, or title to interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this mortgage and by the bond which it secures. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.\*

IN WITNESS WHEREOF, the said party of the first part has signed and sealed this instrument the day and year first above written.

Witness:

..... (SEAL).

### (ACKNOWLEDGMENT)

\* If subject to prior mortgage, add:

"This mortgage is subject and subordinate to two mortgages, one given to secure ..... dollars and interest and the other, ..... dollars and interest, respectively, now prior liens on said premises.

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the interest on either or both said prior mortgages, and should such interest remain unpaid and in arrears for the space of ten days, or should any suit be commenced to foreclose either said prior mortgages, then the amount secured by this mortgage and the accompanying bond shall become and be due and payable at any time thereafter at the option of the owner or holder of this mortgage.

AND IT IS HEREBY FURTHER EXPRESSLY AGREED, that should any default be made in the payment of the interest on either or both said prior mortgages, the holder of this mortgage may pay such interest, and the amount so paid, with legal interest, thereon from the time of such payment, may be added to the indebtedness secured by this mortgage and the accompanying bond, and shall be deemed to be secured by this mortgage and said bond, and may be collected thereunder."

If to be subordinated to new mortgage or building loan, insert:

"This mortgage is and shall at all times be subject and subordinate in lien to the lien of a building loan mortgage and to any permanent first mortgage in an amount not exceeding ..... dollars and interest and to all amounts which may at any time be advanced thereon not exceeding in the aggregate ..... dollars and interest and the holder of this mortgage agrees to execute any proper agreement to evidence such subordination."

## ASSIGNMENT OF MORTGAGE—WITH COVENANT

KNOW ALL MEN BY THESE PRESENTS, That I, ..... party of the first part, for and in consideration of.....dollars, lawful money of the United States, paid by ....., party of the second part, do sell, assign and transfer unto the party of the second part, a certain indenture of mortgage given to secure payment of the sum of ..... dollars and interest, bearing date the ..... day of ....., nineteen hundred and ....., made by ..... to ..... and duly recorded in the office of the ..... of the County of ..... on the ..... day of ....., nineteen hundred and ....., in liber ..... of mortgages, of Section ....., page ....., which said mortgage covers premises ..... which said premises are included in Block Number ..... in Section ..... on the Land Map of the .....

TOGETHER with the bond or obligation described in said mortgage, and the moneys due and to grow due thereon with the interest.

TO HAVE AND TO HOLD the same to the party of the second part, and to the successors, legal representatives and assigns of the party of the second part, forever, subject only to the proviso in said indenture of mortgage mentioned.

AND the party of the first part does hereby make, constitute and appoint the party of the second part the true and lawful attorney, irrevocable, of the party of the first part, in the name of the party of the first part, or otherwise, but at the proper costs and charges of the party of the second part, to have, use and take all lawful ways and means for the recovery of said money and interest, and in case of payment to discharge the same as fully as the party of the first part might or could do if these presents were not made.

AND the party of the first part does hereby covenant with the party of the second part, and with the successors, legal representatives and assigns of the party of the second part, that there is now owing upon ..... mortgage, without offset or defense of any kind, the principal sum of ..... dollars, with interest thereon at ..... per centum per annum from the ..... day of ....., nineteen hundred and .....

IN WITNESS WHEREOF, the party of the first part.....

.....[L. s.]

In the presence of

.....

### (ACKNOWLEDGMENT)

[The last paragraph in the above assignment is known as the covenant and is often omitted. In case the assignor refuses to assume any responsibility, he may insert the following clause:

"This assignment is given and received upon the express understanding that no recourse shall be had to the assignor in any event whatsoever."]

No. 47

## SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, that I, ....., DO HEREBY CERTIFY, that a certain indenture of mortgage, bearing date the ..... day of ..... nineteen hundred and ....., made and executed by ..... to secure payment of the principal sum of ..... dollars and interest, and duly recorded in the office of the ..... of the County of ..... in liber ..... of mortgages, of Section ....., page ....., on the ..... day of ..... nineteen hundred and .....

IS PAID, and do hereby consent that the same be discharged of record.

Dated, the ..... day of ..... nineteen hundred and .....

.....[L. S.]

In presence of:

.....

(ACKNOWLEDGMENT)

No. 48

## EXTENSION OF MORTGAGE

AGREEMENT, made the ..... day of ..... nineteen hundred and ..... between ..... hereinafter designated as the party of the first part, and ....., hereinafter designated as the party of the second part:

WITNESSETH, that the party of the first part, the holder of a certain bond made by ....., dated ..... 19..., secured by a mortgage bearing even date therewith, and recorded in the office of the ..... of the County of ....., in Liber ..... of Mortgages, page ....., on which bond there is now due the sum of ..... dollars, with interest thereon, in consideration of one dollar paid by said party of the second part, and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby extend the payment of the principal indebtedness secured by said bond to the ..... day of ..... nineteen hundred and .....

PROVIDED the party of the second part meanwhile pay interest on the amount owing on said bond at the rate of ..... per centum per annum, from ..... 19..., semi-annually, on the first days of ..... and ..... in each year and also comply with all the other terms of said bond and mortgage as hereby modified:

AND ....., the party of the second part, in consideration of the above extension and of one dollar paid by said party of the first part, and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby covenant to pay said principal sum and interest as above set forth, and not before the maturity thereof as the same is hereby extended, and to comply with the other terms of said bond and mortgage; and the party of the second part covenants that the principal and the interest hereby agreed to be paid, shall be a lien on the mortgaged premises and be secured by said bond and mortgage, and that when the terms of said bond and mortgage in any way conflict with the terms and provisions of this agreement, the terms and provisions of this agreement shall prevail, and that there are no offsets or defences to said bond and mortgage.

The party of the second part represents that said ....., party of the second part, now owns the premises described in said mortgage.

## 272 REAL ESTATE PRINCIPLES AND PRACTICES

AND ....., the party of the second part, covenants with the party of the first part as follows:

1. That the party of the second part will pay the indebtedness as hereinbefore provided.

2. That the party of the second part will keep the buildings on the premises insured against loss by fire for the benefit of the party of the first part.

3. That no building on the premises shall be removed or demolished without the consent of the party of the first part.

4. That the whole of said principal sum shall become due after default in the payment of any installment of principal or of interest for ..... days, or after default in the payment of any tax, water rate or assessment for ..... days after notice and demand.

5. That the holder of said Mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

6. That the party of the second part will pay all taxes, assessments or water rates, and in default thereof, the party of the first part may pay the same.

7. That the party of the second part within ..... days upon request in person or within ..... days upon request by mail will furnish a statement of the amount due on said Mortgage.

8. That notice and demand or request may be in writing and may be served in person or by mail.

9. That the party of the second part warrants the title to the premises.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereto.

In presence of:

.....

(ACKNOWLEDGMENT)

No. 49

### SUBORDINATION AGREEMENT

AGREEMENT, made this ..... day of ....., nineteen hundred and twenty....., between ....., part.. of the first part,

AND

....., part.. of the second part.

WITNESSETH, that whereas, the part.. of the first part ..... now the owner and holder of a certain mortgage, and the Bond in said Mortgage mentioned, made by ..... to ..... to secure the payment of the principal sum of ..... dollars and interest thereon, and dated ....., 19....; which said Mortgage was duly recorded in the office of the ..... of the County of ..... on ..... 19..., in Liber ....., in Section ..... of Mortgages, at page ....., Block ....., and covers the premises hereinafter mentioned.

AND WHEREAS, ..... about to execute and deliver to said part.. of the second part, a Bond and Mortgage to secure the payment of the principal sum of ..... dollars, and interest thereon, dated ....., 19...., and covering the premises, situate, lying and being in ....., County ..... and State of .....

AND WHEREAS, the said part.. of the second part has refused to make said loan of ..... dollars, unless said first mentioned Mortgage is sub-

ordinated in lien to the lien of said Mortgage about to be made to the part.. of the second part, and to any and all advances heretobefore or hereafter to be made on account thereof.

NOW, THEREFORE, in consideration of the premises and to induce said part.. of the second part to make said loan, and of one dollar paid to said part.. of the first part by said part.. of the second part, the receipt whereof is hereby acknowledged, the said part.. of the first part hereby covenant.. and agree.. with the said part.. of the second part, that said Mortgage held by said part.. of the first part is, and shall continue to be, subject and subordinate in lien to the lien of said Mortgage for ..... dollars, about to be made to the part.. of the second part hereto, and to any and all advances heretobefore or hereafter to be made on account thereof.

This Agreement shall be binding on, and enure to the benefit of the respective heirs, personal representatives, successors and assigns, of the parties hereto.

IN WITNESS WHEREOF, the said part.. of the first part ha.. hereunto ..... day and year first above written.

Sealed and delivered in the presence of

.....  
.....

.....

(ACKNOWLEDGMENT)

No. 50

## RELEASE OF PART OF MORTGAGED PREMISES

THIS INDENTURE, made the ..... day of ..... nineteen hundred and ..... between ..... of ..... party of the first part, and ....., party of the second part,

WHEREAS, ..... by indenture of mortgage, bearing date the ..... day of ....., nineteen hundred and ..... recorded in the office of the ..... of the County of ....., in liber ..... of mortgages, of Section ....., page ....., on the ..... day of ....., nineteen hundred and ....., for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements, of which the lands hereinafter described are part, unto the .....

.....  
.....  
.....

AND WHEREAS, the party of the first part, at the request of the party of the second part, has agreed to give up and surrender the lands hereinafter described unto the party of the second part, and to hold and retain the residue of the mortgaged lands as security for the money remaining due on said mortgage,

NOW THIS INDENTURE WITNESSETH, that the party of the first part, in pursuance of said agreement, and in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does grant, release and quit claim unto the party of the second part, all that part of said mortgaged lands described as follows:

(DESCRIPTION.)

together with the hereditaments and appurtenances thereunto belonging, and all the right, title and interest of the party of the first part, of, in and to the

same, to the intent that the lands hereby conveyed may be discharged from said mortgage, and that the rest of the land in said mortgage specified may remain to the party of the first part as heretofore,

TO HAVE AND TO HOLD, the lands and premises hereby released and conveyed, to the party of the second part, ..... and assigns to ..... and ..... own proper use, benefit and behoof forever, free, clear and discharged of and from all lien and claim under and by virtue of the indenture of mortgage aforesaid.

IN WITNESS WHEREOF, the party of the first part .....

.....[L. s.]

In presence of:

.....

(ACKNOWLEDGMENT)

No. 51

## SPECIMEN OF RELEASE CLAUSE FOR INSERTION IN MORTGAGE

And the mortgagee hereby covenants and agrees for itself, its successors and assigns, to and with the mortgagor, its successors and assigns, that the owner of the premises above described shall have the privilege of obtaining releases of portions thereof from the lien of this mortgage upon the following terms and conditions, namely: No release shall be given for less than two adjoining lots, and interest on the sum paid therefor shall be paid up to the date of the delivery thereof. All releases shall be prepared by the attorney for the holder of the mortgage at the expense of the owner of the premises. There shall be paid for releases of lots as follows:

(Insert designation of portions and release price of each.)

No release shall be given if the semi-annual interest or any part thereof or any taxes or assessments remain unpaid.

No portion of said premises shall be released without access to the other portion of said mortgaged premises being given by means of an open street or avenue, the said mortgagee always reserving in the release to be given as aforesaid a right of way over such street or avenue to the remaining unreleased portion of said premises.

The expense for the preparation of each release shall be Five Dollars and Fifty Cents (\$5.50) for all such property as shall be sold to any one purchaser at any one time and required to be released, the mortgagee having the right to execute separate releases to the several purchases or a release to the mortgagor.

It is further expressly understood and agreed by and between the parties hereto that should the owner of said premises desire to make deeds of cession to the City of New York, parts of said premises that lie within the lines of a street or avenue as laid down on the Town Survey Commissioners Map of Kings County for the purpose of dedicating such street or avenue, then the holder of this mortgage will release the premises in such street or avenue from the lien of this mortgage without being paid any consideration therefor except the counsel fee for preparing the release.

No. 52

## SPECIMEN OF RELEASE CLAUSE FOR USE IN RELEASE AGREEMENT

NOW, THEREFORE, in consideration of such requests, and the further consideration of the sum of One (\$1.00) Dollar and other good and valuable considerations to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part agrees that until it shall demand payment of the entire principal sum secured to be paid by said bond and mortgage, or any balance due thereon, that it will release from the lien of said mortgage any or all of the lots shown upon said map upon the payment of the sums stated as the release price of each lot in the Schedule hereto annexed and hereby made a part hereof, together with the interest thereon from the date of the last payment of interest to the date of the delivery of said release,—such release shall, however, be upon and subject to the following conditions:

**FIRST:** All releases shall be drawn by the attorney of the party of the first part at the expense of the party of the second part, and not to exceed a charge of Five (\$5.00) Dollars for each release so drawn. No release can be demanded as a matter of right if interest or the taxes affecting the mortgaged premises are in arrears.

**SECOND:** In the event of a foreclosure of said mortgage, and a sale of the premises thereunder, the unreleased portion may be sold in one or more parcels at the election of the party of the first part, and the order of sale of any parcels, if sold in more than one parcel, shall be determined wholly by the party of the first part.

**THIRD:** The release of any lot under this agreement shall carry with it the right of ingress and egress over the street upon which it fronts, and such other street or streets as may be necessary to reach the nearest public highway.

### SCHEDULE OF LOTS AND OF RELEASE PRICES.

<i>Block</i>	<i>Plot</i>	<i>Release Price</i>
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No. 53

## SUBORDINATION AND DEFAULT CLAUSES FOR USE IN JUNIOR MORTGAGES

This mortgage is subject and subordinate to ..... mortgage ..... given to secure the payment of ..... Dollars and interest, recorded in the office of the ..... of the County of ..... in Liber ..... of mortgages, page ....., now a prior lien on said premises, and shall be and remain subject and subordinate to any extension thereof or to any new mortgage replacing it, to an amount not in excess of ..... dollars.

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the interest on ..... said prior mortgage., and such interest remain unpaid and in arrears for the space of ten days, or should any suit be commenced to foreclose ..... said prior mortgage., then the amount secured by this mortgage and the accompanying bond shall become and be due and payable at any time thereafter at the option of the owner or holder of this mortgage.

AND IT IS HEREBY FURTHER EXPRESSLY AGREED, that should any default be made in the payment of the interest on ..... said prior mortgage.., the holder of this mortgage may pay such interest, and the amount so paid, with legal interest thereon from the time of such payment, may be added to the indebtedness secured by this mortgage and the accompanying bond, and shall be deemed to be secured by this mortgage and said bond, and may be collected thereunder.

No. 54

## BUILDING LOAN AGREEMENT

AGREEMENT, made this ..... day of ..... 19..., between ..... hereinafter referred to as the borrower and ..... hereinafter referred to as the lender.

WHEREAS, the borrower has applied to the lender for a loan of ..... dollars, to be evidenced by the ..... bond.. of the borrower, conditioned for the repayment of the amount advanced, on the ..... day of ..... 19..., and interest thereon at the rate of six per cent per annum, payable semi-annually, and containing a provision that if the borrower observe all the provisions of this agreement, and the building to be erected on the premises described in Schedule "A" be completed in accordance therewith, which completion shall be evidenced by the certificate.. of the lender, in form to be recorded, that then from and after such completion, the rate of interest shall be ..... per cent per annum, payable semi-annually. Until said building ..... completed, and such certificate ..... delivered, said loan shall be due on demand, at the option of the lender.

NOW, THEREFORE, the lender hereby accepts said application and agrees to make said loan, and the borrower agrees to take it, upon the following terms and conditions:

Said loan shall be secured by ..... mortgage.. duly executed and acknowledged by all persons necessary to make ..... valid lien.. on the premises described in Schedule A hereto annexed, of such a nature as the lender is willing to accept, the said bond.. and mortgage.. to contain the clauses usually employed by ..... in mortgages.

FIRST.—The borrower is to erect on said premises, .....

SECOND.—Said loan is to be advanced at such times and in such amounts as the lender may approve, provided in the judgment of its appraiser the owner is entitled to an advance.

THIRD.—The lender may at any time release portions of the mortgaged premises, upon receiving what, in the opinion of the lender, is a proper payment on account of the mortgage debt.

FOURTH.—The lender may require three days' notice in writing from the applicant before an advance shall be called for.

FIFTH.—No advance will be made unless in the judgment of the lender all work usually done at the stage of construction when the advance is made, be done in a good and workmanlike manner, and all material and fixtures usually furnished and installed at that time are furnished and installed.

SIXTH.—The lender or any holder of said bond.. and mortgage.. may extend the payment of the principal secured by said bond.. and mortgage.. and any extension so granted shall be deemed made in pursuance of this agreement and not to be a modification thereof.



SEVENTH.—In either of the following events, no further advances will be made by the lender, and the bond.. and mortgage.. herein referred to shall become due.

1. If the mortgage offered by the borrower shall not give to the lender a lien for the indebtedness to be secured thereby on the premises above set forth, satisfactory to the lender.

2. If the lender shall not approve of the payment called for because of some act, encumbrance or question arising after the making of the preceding payment.

3. If the borrower assign this contract or said advances or any interest therein, or if said premises be conveyed or encumbered in any way without the consent of the lender.

4. If the improvements on said premises, or any building.. which may be erected upon said premises shall materially encroach upon the street or upon adjoining property.

5. If the building.. be not erected with reasonable speed and in a workmanlike manner.

6. If the improvements on said premises be materially injured or destroyed by fire or otherwise.

7. If the makers of said bond.. and mortgage.. shall fail to comply with any of the covenants therein contained.

8. If any materials, fixtures or articles used in the construction of the building.. or appurtenant thereto be not purchased by the owner of the land so that the ownership thereof will vest in said owner free from encumbrance, on delivery at the premises.

9. If the borrower do not erect said building.. in accordance with plans and specifications which are satisfactory to the lender and which have been approved by the Building and Tenement Department.

10. If the owners of said premises do not permit a representative of the lender to enter upon said premises and inspect the building.. thereon at all reasonable times during construction.

EIGHTH.—The holder of the mortgage.. referred to reserves the right to decrease the total amount to be loaned under this agreement.

NINTH.—So much of the loan as may be required for that purpose, shall be applied at any time that the lender so requires, to the payment or satisfaction and to the discharge of any existing mortgages or any encumbrance on the premises above described, and, under the direction of the applicant, to the payment of any fees, brokerage or other expenses incident to the obtaining or making of the loan contracted for.

IN WITNESS WHEREOF, the parties hereto have signed and sealed these presents the day and year first above written.

IN THE PRESENCE OF:

.....  
 .....

(ACKNOWLEDGMENTS)

#### SCHEDULE A.

The mortgage herein referred to cover.. premises situate in the Borough of ..... of the City of New York, County of ..... and State of New York, shown on the following diagram.

**BUILDING LOAN MORTGAGE**

**THIS MORTGAGE**, made the ..... day of ..... nineteen hundred and ....., between ....., the mortgagor, and ....., the mortgagee.

**WITNESSETH**, that to secure the payment of an indebtedness in the sum of ..... dollars, lawful money of the United States, or so much thereof as may be advanced at any time by the holder of this mortgage, to be paid on the ..... day of ....., nineteen hundred and ....., with the interest at the rate of six per centum per annum on the amounts advanced thereon to be computed from the dates of the advances until the completion of the building now being or about to be erected upon the premises hereinafter described, which completion shall be evidenced by a certificate of the holder of this mortgage, and after the delivery of such certificate at the rate of ..... per centum per annum, to be paid on the ..... day of ..... next ensuing the date hereof, and semi-annually thereafter, it being agreed that until the completion of the said building and the delivery of such certificate, said principal sum or so much thereof as may be advanced and all interest shall, at the option of the holder of this mortgage, be payable on demand without notice, according to a certain bond or obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee, all .....

**TOGETHER** with all fixtures and articles of personal property, now or hereafter attached to, or used in connection with the premises, all of which are covered by this mortgage.

**AND** the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.
2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee.
3. That no building on the premises shall be removed or demolished without the consent of the mortgagee.
4. That the whole of said principal sum shall become due at the option of the holder of this mortgage immediately after default in the payment of any installment of principal, or in the payment of interest for thirty days, or after default in the payment of any tax, water rate or assessment for thirty days.
5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.
6. That the mortgagor will pay all taxes, assessments or water rates, and in default thereof, the mortgagee may pay the same.
7. That the mortgagor within six days upon request in person or within thirty days upon request by mail will furnish a statement of the amount due on this mortgage.
8. That notice and demand or request may be in writing and may be served in person or by mail.
9. That the mortgagor warrants the title to the premises.
10. That in case of a sale, said premises, or so much thereof as may be affected by this mortgage, may be sold in one parcel.
11. That the whole of the principal sum shall become due at the option of the mortgagee after default for thirty days after notice and demand in the payment of any installment of any assessment for local improvement heretofore or here-

after laid which is or may become payable in annual installments, and which has affected, now affects or hereafter may affect the said premises, notwithstanding that such installments be not due and payable at the time of such notice and demand; and also that the whole of said principal sum shall become due at the option of the mortgagee upon any default in keeping the buildings on the premises insured against loss by fire as required by paragraph numbered "2" above, or immediately upon the actual or threatened demolition or removal of any building erected or to be erected upon said premises, or if after application by any holder of this mortgage to two or more fire insurance companies lawfully doing business in the State of New York and issuing policies upon real property situate in the place where the mortgaged premises are situate, the companies to which such application has been made shall refuse to issue such policies.

12. In the event of the passage after the date of this mortgage of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for State or local purposes, or the manner of the collection of any such taxes, so as to affect this mortgage, the holder of this mortgage and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of the land requiring the payment of the mortgage debt. If such notice be given, the said debt shall become due, payable and collectible at the expiration of said thirty days.

13. That the holder of this mortgage, in any action to foreclose it, shall be entitled, (without notice and without regard to the adequacy of any security for the debt), to the appointment of a receiver of the rents and profits of said premises; and in the event of any default in paying said principal or interest, such rents and profits are hereby assigned to the holder of this mortgage as further security for the payment of said indebtedness.

14. If any action or proceeding be commenced (except an action to foreclose this mortgage or to collect the debt secured thereby), to which action or proceeding the holder of this mortgage is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the holder of this mortgage for the expense of any litigation to prosecute or defend the rights and lien created by this mortgage (including reasonable counsel fees), shall be paid by the mortgagor, together with interest thereon at the rate of six per cent per annum, and any such sum and the interest thereon shall be a lien on said premises, prior to any right, or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this mortgage and by the bond which it secures. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

15. This mortgage is made pursuant to a certain agreement for a building loan between the mortgagor and the mortgagee, dated ..... 19..., to be filed in the office of the Clerk of the County of ..... and is subject to all the provisions of said agreement.

IN WITNESS WHEREOF, this mortgage has been duly executed by the mortgagor.

IN PRESENCE OF:

.....

.....

(ACKNOWLEDGMENT)

**CERTIFICATE OF COMPLETION OF BUILDING**

..... do.. hereby certify that the building erected on the premises  
 .....  
 has been fully completed, and that the mortgage covering said premises made  
 by ..... to ..... to secure ..... dollars and interest,  
 dated ....., 19.., and recorded in the office of the ..... County of .....,  
 on the ..... day of ....., 19.., in liber ....., page ..... of mortgages,  
 in section ....., block ..... shall from the date hereof bear interest at and  
 after the rate of ..... per centum per annum.

This certificate is made, according to the terms of said above recited  
 mortgage...

IN WITNESS WHEREOF, the said ..... has hereunto set his hand and  
 seal the ..... day of ..... 192...

IN THE PRESENCE OF

..... [L. S.]

(ACKNOWLEDGMENT)

**MEASUREMENT TABLES****TABLE OF LINEAR MEASURE**

12 inches (in.)	make 1 foot, marked .....ft.
3 feet	" 1 yard, marked .....yd.
5½ yard or 16½ feet	" 1 rod, marked .....rd.
40 rods	" 1 furlong, marked .....fur.
8 furlongs or 320 rods	" 1 statute mile, marked .....mi.

**TABLE OF SQUARE MEASURE**

144 square inches (sq. in.)	make 1 square foot, marked .....sq. ft.
9 square feet	" 1 square yard, marked .....sq. yd.
30¼ square yards	" 1 square rod, marked .....sq. rd.
40 square rods	" 1 rood, marked .....R.
4 roods	" 1 acre, marked .....A.
640 acres	" 1 square mile, marked .....sq. mi.

**TABLE OF SURVEYOR'S LINEAR MEASURE**

7.92 inches (in.)	make 1 link .....l.
25 links	" 1 rod .....rd.
4 rods or 66 feet	" 1 chain .....ch.
80 chains	" 1 mile .....mi.

## TABLE OF SURVEYOR'S SQUARE MEASURE

625 square links (sq. l.)	make 1 pole	.....P.
16 poles	" 1 square chain	.....sq. ch.
10 square chains	" 1 acre	.....A.
640 acres	" 1 square mile	.....sq. mi.
36 square miles (6 mi. square)	" 1 township	.....Tp.

No. 57a

## RULES FOR MEASURING LAND

The following rules will be found of service in many cases that may arise in land parceling, particularly in the computation of areas.

To find the area of a four-sided tract, whose sides are perpendicular to each other (called rectangle): Multiply the length by the breadth, and the product will be the area.

To find the area of a four-sided tract, whose opposite sides are parallel, but whose angles are not necessarily right angles (called a parallelogram): Multiply the base by the perpendicular height, and the product will be the area.

To find the area of a three-sided tract (called a triangle): Multiply the base by half of the perpendicular height, and the product will be the area.

To find the area of a four-sided tract, having two of its sides parallel (called a trapezoid): Multiply half the sum of the two parallel sides by the perpendicular distance between these sides, and the product will be the area.

To ascertain the contents of a tract, bounded by four straight lines, of which no two are parallel to each other (called a trapezium), and the length of each line is ascertained, and the two opposite angles are supplements of each other): Add all the four sides together, and halve their sum; subtract separately each side from that sum; and the four remainders thus obtained multiply continually together, and extract the square root of the last product. The result will be the contents or area of the tract. OR, divide the tract by lines into triangles and trapezoids, and ascertain and add together their several areas,—the sum of which will be the area of the tract proposed.

Land bounded by an irregular line—as a stream of water, or a winding road—is measured as follows, viz.: Draw a base line as near as practicable to the actual line of the road or stream; and at different places in the base line, equidistant from each other, take the distance to the line of the stream or road. Add the sum of all the intermediate lines (or breadths) to half the sum of the first breadth and last breadth, and multiply the sum thus obtained by the common distance between the breadths. The result will be the area of the land in question.

Should the breadths be measured at unequal distances on the base line, add all the breadths together, and divide their amount by the number of breadths for the mean breadth, and multiply the quotient so obtained by the length of the base line.

## SPECIMEN OF ABSTRACT OF TITLE

## ABSTRACT OF TITLE

OF

JOHN JONES

to the premises shown on the following diagram and more particularly described below: .....

.....  
 (Here insert diagram and written description.)

*(Few titles are now searched back to the sovereign. In most cases title is assumed good in some large tract at some early date. In this specimen abstract the first deed is assumed to come out of the owner of a large farm and to convey a portion thereof.)*

---

WILLIAM BROWN AND MARY  
 BROWN, HIS WIFE,  
 TO  
 JACOB HERMANCE.

WARRANTY DEED  
 Dated Sept. 19, 1864  
 Ack. Sept. 22, 1864  
 Rec. Sept. 24, 1864  
 Bk. 21 page 23

Conveys a large plot of land including the premises under examination.

---

JACOB HERMANCE (Unmarried)  
 to  
 PHILIP SCHOONMAKER

DEED  
 Dated Nov. 12, 1880  
 Ack. Nov. 12, 1880  
 Rec. Dec. 6, 1880  
 Bk. 96 page 187

Conveys the premises under examination.

---

In the Matter of the Estate of  
 PHILIP SCHOONMAKER,  
 Deceased.

PETITION  
 Dated Jan. 19, 1898

---

The petition of Josephine Schoonmaker shows that she is the widow and the Executrix named in the last Will and Testament of Philip Schoonmaker, deceased, who departed this life at ..... on January 1, 1898. The petition further shows that the heirs and next of kin are as follows: Arthur Schoonmaker, Isaac Schoonmaker, and Charles Schoonmaker, and that the above are the only children and all of full age.

**Last Will and Testament of  
PHILIP SCHOONMAKER.**

**WILL**

Dated Jan. 31, 1887  
Proved Feb. 6, 1898  
Recorded in Bk. 103 of  
Wills, page 392.

**The said WILL**

1st: Orders all debts paid.

2nd: Devises all property of every kind and nature to Josephine Schoonmaker, wife of Philip Schoonmaker, who is appointed Executrix.

**JOSEPHINE SCHOONMAKER**  
widow of **PHILIP SCHOONMAKER,**  
to  
**ARTHUR W. VAN WINKLE.**

**DEED**

Dated Feb. 23, 1908  
Ack. Feb. 23, 1908  
Rec. March 18, 1908  
Bk 221, page 353.

Conveys the premises under examination.

**ARTHUR W. VAN WINKLE**  
and **IDA VAN WINKLE,** his wife,  
to  
**PHILIP GIBBS.**

**MORTGAGE**

Dated May 1, 1916  
Ack. May 1, 1916  
Rec. May 2, 1916  
Bk. 402, page 661.

Conveys the premises under examination to secure payment of \$3,000 due May 1, 1919, with interest from date at 6% per annum, payable May and November 1st.

(The abstract of title is generally made for the purpose of a mortgage or sale and the abstract being made for the purchaser or the lender it is customary to insert at this point a memorandum of the final instrument by which the sale or loan is consummated.)

**THIS IS TO CERTIFY** that I have searched the records in the office of the Clerk of the County of ..... State ..... for deeds, mortgages, judgments and all other liens affecting the title to the premises described at the head of this abstract and find nothing affecting the same except as herein set forth.

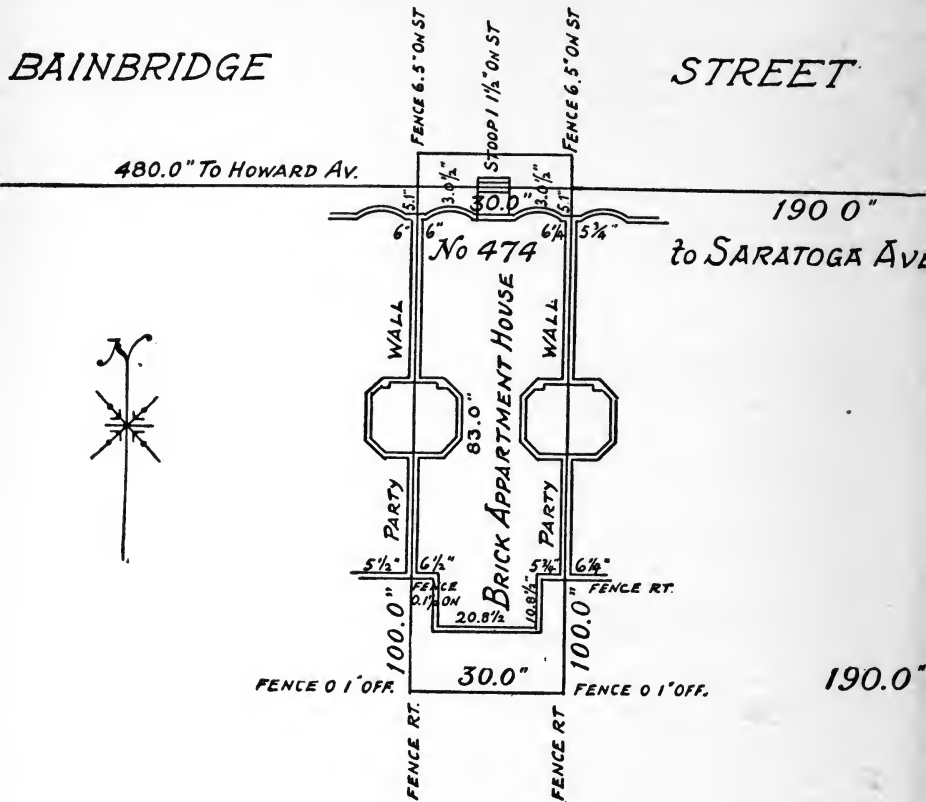
.....

Attorney at Law.

(The abstract above states only the result of the examination of the instruments on record in the office of the County Clerk, Surrogate and Registrar. In the examination of title it is customary to examine the records of the appropriate United States Court for bankruptcies and the records of the appropriate offices for taxes, assessments and water charges. Where this is done certificates of such searches are usually attached to the abstract.)

No. 59

SPECIMEN OF SURVEY



No. 60

UPON THE CLOSING OF TITLE THE SELLER SHOULD BE PREPARED WITH THE FOLLOWING

1. Seller's copy of the contract.
2. The latest tax, water and assessment receipted bills.
3. Latest possible water meter reading.
4. Receipts for last payment of interest on mortgages.
5. Originals and certificates of all fire, liability and other insurance policies.
6. Estoppel certificates from the holder of any mortgage which has been reduced showing the amount due and the date to which interest is paid.
7. Any subordination agreements which may be called for in the contract.
8. Satisfaction pieces of mechanics liens, chattel mortgages, judgments or mortgages which are to be paid at or prior to the closing.



9. List of names of tenants, amounts of rents paid and unpaid, dates when rents are due and assignment of unpaid rents.
10. Assignment of leases.
11. Letters to tenants to pay all subsequent rent to the purchaser.
12. Affidavit of title.
13. Authority to execute deed if the seller is acting through an agent.
14. Bill of Sale of personal property covered by the contract.
15. Seller's last deed.
16. Have any unrecorded instruments affecting the title including extension agreements.
17. Deed and other instruments which the seller is to deliver or prepare.

## No. 61

**UPON THE CLOSING OF TITLE THE PURCHASER SHOULD BE PREPARED WITH THE FOLLOWING**

1. Purchaser's copy of contract.
2. Abstract of title.
3. Report of title.
4. Examine deed to see if it conforms to the contract.
5. Compare description.
6. See that deed is properly executed.
7. Have sufficient cash or certified checks to make payments required by contract.
8. See that all liens which must be removed are properly disposed of.
9. Obtain names and details with reference to tenants and rents.
10. Obtain assignment of unpaid rents and assignment of leases.
11. Obtain and examine estoppel certificates with reference to mortgages which have been reduced.
12. Obtain letter to tenants.
13. Obtain affidavit of title.
14. Obtain and examine authority if the seller acts through an agent.
15. Obtain Bill of Sale of personal property covered by the contract.
16. Obtain any old deeds which the seller may have.
17. Examine survey.
18. See if report of title shows any covenants, restrictions or consents affecting the title or use of the property.
19. Have bills for any unpaid tax, water or assessments and have interest computed up to the date of closing.
20. Make adjustments as called for in the contract.
21. Examine purchase money mortgages and duly execute them.
22. Have damage award, if any, for public improvements assigned to the purchaser.
23. Obtain any unrecorded instruments affecting the title including extension agreements.

# AFFIDAVIT OF TITLE

STATE OF NEW YORK }  
County of..... } ss.:

..... being duly sworn, says, that he resides at ..... and is by occupation .....; that he is a citizen of the United States, twenty-one years of age and upwards; and that he is now in possession, and the owner in fee simple, of the premises known as ..... in ..... this day to be ..... by him to .....

Deponent further says that the said premises have been held by him for upwards of ..... years last past, and that his possession thereof has been peaceable and undisturbed, and that the title thereto has never been disputed, questioned or rejected, to his knowledge, nor does deponent know of any facts by reason of which said possession or title might be disturbed, or questioned, or by reason of which any claim to said premises, or any part thereof, or any interest therein adverse to him, might arise, or be set up adverse to this deponent; and that he is informed and believes that his grantors held the said premises for more than twenty years prior to the transfer to him; and that no person has any contract for the purchase of, or claim to or against said premises, except as hereinafter stated; and that the same are now free and clear of all taxes, incumbrances or liens by mortgage, decree, judgment or by statute, or by virtue of any proceedings by or against him in any court or before any officer of any State or of the United States, or filed in the office of the clerk of any county or court in this State, or in any State or the United States and of all other liens of every nature and description, save and except

.....  
.....

or have any proceedings in bankruptcy ever been instituted by or against the deponent in any court or before any officer of any State, or of the United States, or has deponent at any time made an assignment for the benefit of creditors.

Deponent further says that he is married to\* ..... and who is the same person who executed, with deponent, the ..... to the said premises; and that there are no judgments, or decrees, or attachments, or orders of any court or officer for the payment of money against him, or to which he is a party, unsatisfied or not canceled of record in any of the courts, or before any officer of the United States, or this State, or any suit or proceedings pending anywhere affecting said premises, to his knowledge, information or belief and that any judgments found of record against any person under the name..... are not against deponent.

Deponent makes this affidavit to induce .....above named, to accept a ..... said premises, and pay the consideration therefor, knowing that said ..... relies upon the truth of the statements herein contained.

Sworn to before me, this .....  
day of.....

\* In case deponent is a single man, a widower, or if he has been divorced for his fault or not, such facts should be substituted.

No. 63

**ESTOPPEL CERTIFICATE—FROM OWNER**

THE UNDERSIGNED, owning the premises situate in the .....,  
shown on the following diagram

.....  
covered by a mortgage for \$...... and interest, dated ....., 1 ....., and  
recorded ..... in the office of the ..... of the County of ....., in  
liber ....., page ....., of mortgages, in Section ....., which mortgage is  
about to be assigned by ..... the holder to .....; hereby certifies,  
in consideration of one dollar paid and to enable said assignment to be made  
and accepted, that said mortgage, so to be assigned, is a valid ..... lien on  
said premises for the full amount of principal and interest due thereon, namely  
\$...... with interest at ..... per cent per annum from ....., 19....,  
and that there are no defenses or offsets to said mortgage, or to the bond which  
it secures.

The undersigned further certifies that all the other provisions of said bond  
and mortgage are unmodified and in force.

Dated ..... day of ..... 19....

WITNESS,

(ACKNOWLEDGMENT)

No. 64

**ESTOPPEL CERTIFICATE—FROM JUNIOR  
MORTGAGEE**

THE UNDERSIGNED, the owner and holder of ..... certain mortgage.,  
for ..... dollars, ..... and interest ..... dated the ..... day of .....  
1...., and recorded in the office of the ..... of the County of ..... on  
the ..... day of ..... 1 ....., in liber ..... of mortgages, page .....,  
in Section ....., which mortgage cover.. certain premises situate in the  
.....  
which premises are also covered by a mortgage for ..... dollars and in-  
terest dated ....., 1...., and recorded in said ..... office on .....,  
1...., in liber ..... of mortgages, page ..... in Section ....., which last  
mentioned mortgage is about to be assigned by ..... the holder thereof to  
..... hereby certifies, in consideration of one dollar paid and to enable  
said assignment to be made and accepted, that said last mentioned mortgage,  
so to be assigned, is a valid ..... lien upon the said premises for the  
full amount of principal and interest due thereon, namely, \$...... with in-  
terest at ..... per cent per annum from the ..... day of ....., 19....,  
and that there are no defenses or offsets to said mortgage, or to the bond which  
it secures.

The undersigned further certifies that all the other provisions of said last  
mentioned bond and mortgage are unmodified and in force.

Dated the ..... day of ..... 192..

WITNESS,

(ACKNOWLEDGMENT)

## BILL OF SALE—WITH AFFIDAVIT OF TITLE

KNOW ALL MEN BY THESE PRESENTS, THAT.....of the first part, for and in consideration of the sum of ..... lawful money of the United States, to ..... in hand paid, at or before the ensembling and delivery of these presents, by ..... of the second part, the receipt whereof is hereby acknowledged, ha.. bargained and sold, and by these presents do.. grant and convey unto the said part.. of the second part, ..... executors, administrators and assigns,

TO HAVE AND TO HOLD the same unto the said part.. of the second part, .....executors, administrators and assigns forever. And.....do., for..... heirs, executors and administrators, covenant and agree to and with the said part.. of the second part, to warrant and defend the sale of the said ..... hereby sold unto the said part.. of the second part, ..... executors, administrators and assigns, against all and every person and persons whomsoever.

IN WITNESS whereof, ..... have hereunto set ..... hand and seal this ..... day of ..... one thousand nine hundred .....

*Scaled and delivered in the Presence of*

.....[L. S.]

STATE OF..... }  
CITY OF..... } ss.:  
COUNTY OF..... }

being duly sworn, deposes and says that ..h.. resides at ..... in the Borough of ....., in the City of .....

That ..h.. is the same person who executed the within bill of sale.

That ..h.. is the sole and absolute owner.. of the property described in said bill of sale, and each and every part thereof, and has full right to sell and transfer the same.

That the said property, and each and every part thereof, is free and clear of any and all liens, mortgages, debts and other incumbrances or claims of whatsoever kind or nature.

That ..h.. is not indebted to anyone and has no creditors.

That there are no judgments existing against ..h.., in any Court, nor are there any replevins, attachments, or executions issued against ..h.. now in force; nor has any petition in bankruptcy been filed by or against ..h..

That this affidavit is made for the purpose and with the intent of inducing ..... to purchase the property described in said bill of sale, knowing that ..h.. will rely thereon and pay a good and valuable consideration therefor.

Sworn to before me this.....

day of .....192..

(ACKNOWLEDGMENT)

No. 66

## FORM OF STATEMENT OF CLOSING TITLE

TITLE TO PREMISES NO. .... closed ... (date) ... at ..... (place) ....  
 present .... (name persons attending closing) .... Title closed by delivery  
 of following instruments:

DEED  
 .....  
 to  
 .....

Dated .....  
 Recorded ..... by .....  
 To be returned to .....

MORTGAGE  
 .....  
 to  
 .....

Dated .....  
 Recorded ..... by .....  
 To be returned to .....

Terms of mortgage .....

INSURANCE (insert memo. of names and details of policies, changes to be  
 made and by whom).

## STATEMENT OF ADJUSTMENTS

	<i>Cr.</i>	<i>Dr.</i>
Purchase price .....		\$.....
Paid on signing contract .....	\$.....	
Mortgage held by .....	\$.....	
Interest from ..... to ..... at .....%	\$.....	
Purchase money mortgage .....	\$.....	
Insurance .....		\$.....
Rent .....	\$..... (or)	\$.....
Other items .....	\$..... (or)	\$.....
Total credits .....	\$.....	\$.....
Total debits .....		
Total credits brought over .....		\$.....
Balance paid .....		\$.....
EXPENSES (insert memo. of fees and expenses for drawing and recording papers and by whom paid.		

No. 67

## LEASE

THIS INDENTURE, made the ..... day of ..... one thousand nine  
 hundred ..... BETWEEN .....,  
 party of the first part, and ..... party  
 of the second part WITNESSETH, That the said part.. of the first part ha..  
 letten and by these presents do.. grant, demise, and to farm let, unto the said  
 part.. of the second part, and the said part of the second part ha.. hired and  
 taken and by these presents do.. hire and take of and from said part.. of the

first part, .....  
 .....  
 .....  
 with the appurtenances, for the term of ..... from the ..... day of .....  
 one thousand nine hundred ..... at the yearly rent or sum of.....  
 to be paid in ..... equal ..... payments, .....

AND it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained then it shall be lawful for the said part.. of the first part to re-enter the said premises and the same to have again, to re-possess and enjoy.

AND the said part.. of the second part do.. covenant to pay unto the said part.. of the said yearly rent as herein specified.

AND that at the expiration of the said term the said part.. of the second part will quit and surrender the premises hereby demised, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

AND the said part.. of the second part do.. hereby expressly covenant and agree, that if the said demised premises shall become vacant at any time during the said term, the said part.. of the first part and ..... legal representatives or assigns may re-enter the same by force or otherwise without being liable to any prosecution therefor, and may relet the said premises as the agent and for account of the said part.. of the second part, and receive the rent thereof, applying the same first to the payment of such expense as ..... may be put to in re-entering and reletting, and then to the payment of the rent due by these present, with interest, and the balance, if any, to be paid over to the said part.. of the second part, and any deficiency which may arise the said part.. of the second part hereby covenant to pay in full.

AND the said part.. of the first part do.. covenant that the said part.. of the second part, on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

WITNESS our hands and seals the day and year first above written.

In the presence of

.....

## LEASE—GILSEY FORM

THIS AGREEMENT between ..... as landlord, and ..... as Tenant.. WITNESSETH:—That the said Landlord.. let unto the said Tenant.. and the said Tenant.. hired from the said Landlord .....  
 .....  
 .....  
 for the term ..... to be used and occupied ..... upon the conditions and covenant following:

1st. That the Tenant.. shall pay the rent .....

.....

2d. That the Tenant.. shall take good care of the premises ..... and at the end or other expiration of the term shall deliver up the demised premises in good order or condition, damages by the elements excepted.

3d. That the Tenant.. shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government, and of any and all their Departments and Bureaus applicable to said premises, for the correction, prevention, and abatement of nuisances or other grievances, in, upon or connected with said premises during said term; and shall also promptly comply with and execute all rules, orders, and regulations of the New York Board of Fire Underwriters for the prevention of Fires, at ..... own cost and expense.

4th. That the Tenant shall not assign this Agreement, or underlet or underlease the premises or any part thereof, or make any alterations on the premises, without the Landlord.. consent in writing; or occupy, or permit or suffer the same to be occupied for any business or purpose deemed disreputable or extra-hazardous on account of fire, under the penalty of damage and forfeiture.

5th. That the Tenant shall, in case of fire, give immediate notice thereof to the Landlord.. who shall thereupon cause the damage to be repaired forthwith; but if the premises be so damaged that the Landlord.. shall decide to rebuild, the term shall cease and the accrued rent be paid up to the time of the fire.

6th. The said Tenant.. agree.. that the said Landlord and Agents, and other representatives, shall have the right to enter into and upon said premises, or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs or alterations therein as may be necessary for the safety and preservation thereof.

7th. The Tenant.. also agree.. to permit the Landlord or ..... agents to show the premises to persons wishing to hire or purchase the same; and the Tenant.. further agree.. that on and after ..... next preceding the expiration of the term hereby granted, the Landlord or ..... Agents shall have the right to place notices on the front of said premises, or any part thereof, offering the premises "To Let" or "For Sale," and the Tenant.. hereby agree.. to permit the same to remain thereon without hindrance or molestation.

8th. That if the said premises, or any part thereof, shall become vacant during the said term, the Landlord.. or ..... representatives may re-enter the same, either by force or otherwise, without being liable to prosecution therefor; and re-let the said premises as the Agent of the said Tenant.. and receive the rent thereof, applying the same, first to the payment of such expenses as ..... he may be put to in re-entering, and then to the payment of the rent due by these presents; the balance [if any] to be paid over to the Tenant.. who shall remain liable for any deficiency.

9th. That in case of any damage or injury occurring to the glass in the..... or damage and injury to the said premises of any kind whatsoever, said damage or injury being caused by the carelessness, negligence or improper conduct on the part of the said Tenant.. Agents or Employees, then the said Tenant.. shall cause the said damage or injury to be repaired as speedily as possible at ..... own cost and expense.

10th. That the Tenant.. shall neither encumber nor obstruct the sidewalk in front of, entrance to or halls and stairs of said building, nor allow the same to be obstructed or encumbered in any manner.

11th. The Tenant shall neither place, or cause, or allow to be placed, any sign or signs of any kind whatsoever at, in or about the entrance to said ..... except in or at such place or places as may be indicated by the said Landlord.. and consented to by ..... in writing. And in case the Landlord.. or

representative shall deem it necessary to remove any such sign or signs in order to paint the ..... or make any other repairs, alterations or improvements in or upon said ..... or any part thereof, they shall have the right to do so, providing they cause the same to be removed and replaced at ..... expense, whenever the said repairs, alterations or improvements shall have been completed.

12th. It is expressly agreed and understood by and between the parties to this agreement, that the Landlord.. shall not be liable for any damage or injury by water, which may be sustained by the said Tenant.. or other person; or for any other damage or injury resulting from the carelessness, negligence, or improper conduct on the part of any other Tenant.. or Agents, or Employees, or by reason of the breakage, leakage, or obstruction of the City Water or soil pipes, or other leakage in or about the said building.

13th. That if default be made in any of the covenants herein contained, then it shall be lawful for the said Landlord.. to re-enter the said premises, and the same to have again, re-possess and enjoy. The said Tenant.. hereby expressly *wave* the service of any notice in writing of intention to re-enter, as provided for in §1505 of the Code of Civil Procedure and in the third section of an Act entitled "An Act to abolish Distress for Rent and for other purposes" passed May 13, 1846. (Applies to New York.)

.....  
And the said Landlord.. doth covenant that the said Tenant.. on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

And it is further understood and agreed, that the covenants and agreements herein contained are binding on the parties hereto and their legal representatives.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this ..... day of ..... one thousand nine hundred and .....

Sealed and delivered in the presence of

.....

.....

.....

## SPECIMEN OF LONG FORM OF LEASE

THIS INDENTURE, made the ..... day of ..... in the year one thousand nine hundred and ....., between REALTY ASSOCIATES, a corporation organized under the laws of the State of New York, hereinafter designated as Landlord, and ..... hereinafter designated as Tenant,

WITNESSETH, that the Landlord has agreed to let and hereby does let, and the Tenant has agreed to hire, and hereby does hire from the Landlord all that portion of the premises in the Borough of Brooklyn, County of Kings, City and State of New York, known as and by the street number ..... more fully described as follows: .....

.....  
; for a term of ..... which term shall commence on the ..... day of .....



and end on the ..... day of ....., unless sooner terminated as hereinafter provided, for the total rent or sum of ..... dollars.

#### AND THE TENANT COVENANTS AND AGREES:

1st. To pay the rent as aforesaid as follows:

.....

2d. To make all repairs, both exterior and interior, and also all repairs to elevators and elevator machinery, and any other apparatus belonging to the building, and the Landlord shall not be liable for any manner of repairs in or about said premises or to any part of the street, sidewalk or vaults in front thereof;

In case of default by the Tenant under this paragraph, then, and in that event, the Landlord, its successors or assigns, may make such repairs as may be necessary, and all necessary expenses consequent thereupon shall be borne by the Tenant and shall be deemed collectible as additional rent, and shall become due and payable by the Tenant to the Landlord immediately after the same shall have been paid or incurred by the Landlord, and the Landlord shall have the right to enter in upon said premises to make such repairs;

3d. IN CASE the Tenant shall have repairs made to the building and a lien shall be filed upon the premises, forthwith to take such action as will remove the lien from the premises, and in default thereof for ten days after notice, the Landlord may pay the amount of such lien or discharge the same by deposit and the amount so paid or deposited shall be deemed additional rent reserved under this lease and payable with interest from the date of such payment upon the next day upon which rent shall accrue under this lease;

4th. To make good all damage resulting from misuse or neglect;

5th. To take good care of the premises and suffer no waste or injury;

6th. To pay as additional rent on or before the thirty-first day of July in each and every year a sum equal to all charges which may be made for the use or rent of Croton or other water in said premises, and also to pay within sixty days after the same shall have become payable, all taxes imposed on said premises, except as follows, .....

7th. To pay as additional rent at all times during the said term, all premiums upon policies of fire insurance which may be taken upon the said premises; .....

8th. At all times during the said term at the expense of the Tenant to insure and keep insured in favor of the Landlord, all plate glass in the store fronts, windows and doors of the above described premises in such amounts as shall be satisfactory to the Landlord, and to furnish the Landlord with policies of insurance covering the same;

9th. In case the Tenant fails to furnish such insurance as above provided or to pay the premium or premiums upon the same, or in case the Tenant shall fail to pay such water rates or any charge or tax, as above provided, the Landlord may in each and every case procure such insurance or pay such amounts and may add the amount of such premiums or payments to the next installment of rent falling due and the same, with interest thereon from the date of payment, shall be additional rent reserved hereunder, payable on the next day provided for the payment of rent succeeding the payment of such premiums or payments by the Landlord;

## 294 *REAL ESTATE PRINCIPLES AND PRACTICES*

10th. To furnish the Landlord at all times during the term of this lease with security in the sum of ..... dollars, which security shall be furnished as follows: .....

11th. To allow the usual notice of "To Let" to be placed upon the walls or in a conspicuous place upon the exterior of the said premises for six months prior to the expiration of the term of this agreement, and "For Sale" notices at any time during the term, and to permit such notices to remain thereon without hindrance or molestation, and also to permit applicants to inspect the interior of said premises during such period between the hours of 10 A. M. and 5 P. M. on each and every business day during such time;

12th. To admit representatives of the Landlord into said premises at all times for the purpose of making alterations or improvements;

13th. To comply at the expense of the Tenant with all rules, orders, ordinances and regulations of each and every department or bureau of the City, County, State or National Government applicable to the said premises, and of the New York Board of Fire Underwriters, whether usual or unusual, ordinary or extraordinary;

14th. In case of fire to give immediate notice thereof to the Landlord, which shall cause the damage to be repaired as speedily as possible. If the damage be so extensive as to render the premises untenable, the rent shall be paid up to the date of the fire, and shall cease until such time as the building shall be put in proper repair, and thereafter the Tenant shall again pay the rent herein reserved, and have no option to cancel this lease; but if the destruction be total, the rent shall be paid up to the time of such destruction, and then and from thenceforth, this lease shall cease, provided, however, that such damage or destruction be not caused by the carelessness, negligence or improper conduct of the Tenant, or the servants or agents of the Tenant.

15th. To quit and surrender the premises at the expiration of said term in as good state and condition as they were at the commencement of the term, reasonable use and wear thereof and damages by the elements excepted;

16th. Unless the written consent of the Landlord shall first be obtained, not to

a. Make any alterations in the premises,

b. Sublet the whole or any part thereof for any business which may be obnoxious or detrimental to the neighborhood,

c. Use the premises or any part thereof for any purpose deemed extra hazardous,

d. Assign this lease;

17th. To indemnify and save harmless the Landlord for and against any and all liability, losses, damages and expenses, causes of action, suits, claims and judgments arising from injury to person or property of any and every nature, and for any matter or thing growing out of the occupation of the demised premises, the demolition by the Tenant of the buildings now thereon, the construction of any building thereon, or arising or growing out of the use, occupation, management, possession or control of the demised premises, or of any building thereon, or of the streets, sidewalks or vault adjacent thereto, occasioned by the Tenant, the agents, employees, assigns of the Tenant or by sub-tenants, or by their sub-tenants, their agents or employees, sub-tenants or assigns respectively, or which may be occasioned by any person or thing whatever, at any time during the term of this lease;

18th. To hold the Landlord harmless from and indemnified against all damages including Counsel fees and expenses to any person or persons by reason of an act commonly known as the "Civil Damage Law," or any other act of similar purport;

19th. That, in case of default on the part of the Tenant or on the part of any person or persons claiming through or under the Tenant in the payment of any of the rents herein reserved, or reserved in any renewal hereof, or in the performance on the part of the Tenant of any of the covenants contained herein, or in any renewal hereof, to be kept and performed by the Tenant, neither the Tenant nor any such person or corporation shall have or claim any right of redemption in said premises under Sections 2256 or 2257 of the Code of Civil Procedure, nor under any law now in force or hereafter enacted, after any termination of this lease by re-entry by the Landlord or by its obtaining possession under summary proceedings or otherwise in any lawful manner; and the said Tenant for the Tenant and every such person hereby releases all such right of redemption; AND the Tenant for the Tenant and every such person agrees that in the event of any action of ejectment brought by the Landlord, its successors or assigns for failure to perform any of the covenants herein, or in any renewal hereof, the Tenant for the Tenant and every such person waives all right to any second or further trial as matter of right or favor under Sections 1525 and 1526 of the Code of Civil Procedure, or any other law of similar import now existing or which may hereafter be enacted.

**IT IS SPECIFICALLY UNDERSTOOD AND AGREED BETWEEN THE LANDLORD AND TENANT: THAT**

1st. All improvements made in, to or upon said premises by the said Tenant shall become the property of the Landlord at once when made:

2d. The Landlord shall not be liable for any personal or property damage caused by other tenants or persons in said building, or resulting from electricity, water, rain, snow or gas, which may leak or flow from any part of said building, or from the pipes or plumbing works of the same, or from any other place, nor for any interference with light or otherwise, by neighboring owners, or caused by the operations of the City in the construction of any public work;

3d. The Landlord shall not be responsible for any latent defect or change of condition in any building now on the premises or in any building which may be put on the premises during the term of this lease or any renewal hereof, nor be liable to any person for damages to any such building nor for damage to persons or property by reason of anything aforesaid; and the rent shall not be withheld or diminished on account of any such defect or change;

4th. If the Tenant shall make default in fulfilling any of the covenants and conditions of this lease or in making any payment herein provided, or in case the Tenant abandons the premises and the same shall become vacant, the Landlord may re-enter said premises and remove all persons therefrom, either by any suitable action or proceeding at law or by force or otherwise without being liable to indictment, prosecution or damages therefor, and in any such case the Landlord may give to the Tenant five days' notice of its election to end the term under this lease, and thereupon the term under this lease shall expire and all right of occupation thereunder on the part of the Tenant shall end, and the Tenant will quit and surrender the said premises to the Landlord, and at the option of the Landlord, it may relet the premises as the agent of the Tenant and receive the rents therefor, applying the same first to the payment of such expenses as it may be put to, and then to the payment of the rent and other payments which may be or become due according to the terms of this lease, and the balance, if any, at the expiration of the term of this lease, shall be paid over to the Tenant;

5th. IN CASE of re-entry or of termination of this lease by summary proceedings, or otherwise, whether the premises be relet or not, the Tenant shall remain liable until the time when this lease would have expired but for the termination thereof, for the yearly rent and additional rent reserved herein,

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less the avails of reletting, if any there be, and shall pay the same monthly, or otherwise, as hereinbefore provided for payment of rent;

6th. The failure of the Landlord to insist in any one or more instances upon strict performance of any of the covenants or conditions of this lease, or of any renewal hereof, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or option, but the same shall continue and remain in full force and effect.

7th. ALL NOTICES provided for in this lease shall be given in writing and may be given by mailing and depositing the same in any Post Office Station or letter-box enclosed in a post-paid envelope addressed to the Tenant at the demised premises.

8th. This lease shall be subject and subordinate at all times to the lien of the mortgages now on the demised premises and subject and subordinate to the lien of any mortgage or mortgages which at any time may be made a lien on the demised premises, and the Tenant covenants that the Tenant and all persons having any interest in this lease will execute proper subordination agreements to this effect at any time upon request of the Landlord. If the Landlord shall at any time fail to pay the interest or any installment of principal which may become due and payable by the terms of such mortgage, or shall fail to pay the taxes and assessments charged against the said premises, or shall fail or neglect otherwise to comply with the terms of such mortgage or mortgages, and the holder or holders of such mortgages shall have previously demanded such payments or such compliance, the Tenant shall have the right to make payment of such interest, taxes or assessments, or any other payment required by the terms of such mortgage or mortgages and, to the extent of such payments, to be subrogated to the rights of the holder of such mortgage, and the Tenant shall have the right to consider such payment as an advance rental of said premises; and if the Tenant shall not have the use of the said premises for the entire period for which such advance rental shall have been paid, the Landlord hereby agrees to pay to the said Tenant the entire amount of such advances, less, however, such proportion thereof as may be properly chargeable as rent for the period of the Tenant's occupancy of said premises.

### THE LANDLORD FOR ITSELF, ITS SUCCESSORS AND ASSIGNS COVENANTS TO AND WITH THE TENANT,

That if, and so long as the Tenant pays the rent and additional rent reserved under this lease and observes the covenants thereof, the Tenant shall quietly enjoy the demised premises and every part thereof, subject, however, to the terms of this lease and to mortgages as aforesaid, which may at any time be or become liens on the demised premises.

THE LANDLORD AND TENANT COVENANT TO AND WITH EACH OTHER that this lease and each and every covenant herein shall bind and run in favor of the Landlord, its successors and assigns and the Tenant, and the executors, administrators, successors and assigns of the Tenant.

IN WITNESS WHEREOF, the Landlord has caused its corporate seal to be hereto affixed and same to be assigned by its proper officers, and the Tenant has executed the same.

REALTY ASSOCIATES,

By .....

.....

(ACKNOWLEDGMENT)

No. 70

**AGREEMENT GUARANTEEING PAYMENT OF RENT**

(TO BE ATTACHED TO LEASE)

IN CONSIDERATION of the letting of the premises within mentioned to the within named ..... and the sum of one dollar to me paid by the said part.. of the first part ..... do hereby covenant.. and agree, to and with the part.. of the first part above named, and ..... legal representatives, that if default shall at any time be made by the said ..... in the payment of the rent and performance of the covenants contained in the within lease on ..... part to be paid and performed, that ..... will well and truly pay the said rent, or any arrears thereof, that may remain due unto the said part.. of the first part, and also all damages that may arise in consequence of the non-performance of said covenants, or either of them, without requiring notice of any such default from the said part.. of the first part.

WITNESS ..... hand and seal this ..... day of ..... in the year one thousand nine hundred and .....

WITNESS,

No. 71

**SCHEDULE OF COMMISSIONS AND CHARGES**

REGULATIONS AS TO REAL ESTATE COMMISSIONS  
AS ADOPTED BY

THE REAL ESTATE BOARD OF NEW YORK

The following schedule of commissions has been approved by the Real Estate Board of New York, viz.:

**PRIVATE SALES**

The commissions for the sale or exchange of real estate in the Boroughs of Manhattan and the Bronx,  $2\frac{1}{2}\%$  of the selling price up to \$40,000 and 1% of the excess of the selling price above \$40,000.

For selling acreage within the limits of the Borough of the Bronx.....	5%
For selling improved property in the Borough of Richmond.....	$2\frac{1}{2}\%$
For selling lots and acreage in the Borough of Richmond.....	5%
For selling leaseholds within the limits of the Borough of Manhattan and the Bronx, on the <i>assessed value</i> of the land and improvements	1%
For selling leases in Manhattan and the Bronx, on the sum of the consideration to be paid for the lease.....	1%
Plus a commission where the lease is for $2\frac{1}{2}$ years or longer on the aggregate rental of \$200,000 or less.....	$1\frac{1}{2}\%$
On aggregate gross rental over \$200,000, $1\frac{1}{2}\%$ will govern up to \$200,000 and 1% additional on the amount above \$200,000.	
For selling furniture and fixtures.....	10%

**WATER FRONT**

For selling water front properties of New York Harbor.....	5%
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### SPECIAL RULES

For exchanging real estate a commission shall be paid on all properties mentioned in the contract by the respective sellers thereto.

No commission of less than \$100 shall be charged in making a sale of property. Should the title of property prove to be imperfect, whereby a sale cannot be consummated, the claim for commission shall not be invalidated thereby.

Brokerage shall be due and payable when the price and terms are arranged between buyer and seller.

### MORTGAGES

For procuring the acceptance of first mortgage loan applications (except by agreement) ..... 1%

### LEASING

Leasing for a term of one year or under on an amount equal to one year's rental ..... 3¾%

Leases for a period of more than one year and less than 2½ years on the average of full year rentals..... 3¾%

Fractional parts of a year are not to be considered.

Leasing for term of 2½ years or longer on aggregate gross rental of \$200,000 or less, on aggregate gross rental..... 1½%

On transactions involving an aggregate gross rental of over \$200,000 the 1½% rate will govern up to \$200,000 and 1% additional on the amount of the gross rental in excess of \$200,000.

Leasing private dwellings or apartments furnished for a term of one year or under on the total rent to be paid..... 5%

There shall be no additional charge for leases under 2½ years.

Leasing private dwellings or apartments furnished for 2½ years or more, on the total amount of rent paid..... 2%

Leasing Water Front Property of New York Harbor on the gross amount of the rental..... 5%

Leasing country property first year..... 5%

Leasing each subsequent year to same party..... 2½%

### No. 72

## SCHEDULE OF REAL ESTATE COMMISSIONS

Adopted 1905, Amended Jan. 8, 1918, and April 12, 1921, by the  
BROOKLYN REAL ESTATE BOARD  
189 Montague St., Brooklyn

This schedule card is issued by the  
BROOKLYN REAL ESTATE BOARD  
for the use of its members

### PRIVATE SALES

City property (limits of Brooklyn) on price obtained..... 2½%

County (suburban) property, on price obtained..... 5%

Water front property, on price obtained..... 5%

For selling leases, on the sum of the consideration to be paid for the lease ..... 1%

"Plus the usual renting commission on the balance of the term of the lease as provided for elsewhere in this schedule.".....

Good Will, Goods and Chattels..... 10%

(Minimum sale commission \$100.)

## RENTALS

One year or less, on annual rent.....	3%
More than one year, on the first year's annual rent.....	3%
Additional year, on the second year's annual rent.....	2½%
Additional year, on the third year's annual rent.....	2½%
Each additional year thereafter, on annual rent.....	1%
Furnished houses or apartments, for the term.....	5%
Country property, one year or less, on annual rent.....	5%
More than one year, on the first year's annual rent.....	5%
Each additional year, on annual rent.....	2½%
Water front property, on annual rent for the term.....	5%
Renewals, Sub-rentals and Assignments shall be computed on the same basis as original lease.	

## MANAGEMENT

On the amount of gross rent.....	5%
Such service if discontinued on notice by client, agent shall be entitled to regular renting commission for the unexpired term of the rentals arranged during such service.	

## MORTGAGE LOANS

On first mortgage.....	1%
Building Loans .....	2%
Country Loans .....	2½%
(Minimum mortgage loan commission, \$50.)	

## APPRAISALS

Lots 20 x 100 feet or less, plot 1 to 3 lots.....	\$15
Each additional lot or fraction thereof, up to 10 lots.....	5
Private dwelling houses, 20 x 100 feet or less.....	15
Each additional lot or fraction thereof.....	5
Tenements and Stores 20 x 100 feet or less.....	20
Each additional lot or fraction thereof.....	10
Loft buildings, factories, garages, stables, 20 x 100 feet or less.....	25
Each additional lot or fraction thereof.....	10
Elevator apartments 50 x 100 feet or less.....	50
Each additional lot or fraction thereof.....	10
Office buildings, waterfronts, hotels, acreage, country residences and other property, not specified, rates by special arrangement.	
Expert testimony and cross-examination, by special arrangement.	

## No. 73

## SCHEDULE OF COMMISSIONS AND CHARGES— Cook County Real Estate Board

## ARTICLE 1.—COMMISSIONS AND CHARGES

SECTION 1. For negotiating leases for business and residence property where rents are not collected by the agent, and where buildings are already erected, but not including ground leases.

Where Term is Six Months or less:

*Rule 1.* Where the term of lease is six (6) months or less, charge seven per cent (7%) on an amount equal to six (6) months' rental. (See Rule 3.)

Where Term is more than Six Months and does not exceed One Year:

*Rule 2.* Where the term is more than six (6) months and does not exceed

## 300 REAL ESTATE PRINCIPLES AND PRACTICES

one (1) year, charge six per cent (6%) on an amount equal to one (1) year's rental. (See Rule 3.)

If Monthly Rentals are not Uniform:

*Rule 3.* If the monthly rentals are not uniform throughout the entire term of any lease coming under the provisions of Rules 1 and 2, the average monthly rental for the actual period of the lease shall be used as the basis for computation.

Where Terms exceed One Year:

*Rule 4.* Where a term exceeds one (1) year, use as a basis charge, six per cent (6%) and add for each six (6) months or fraction thereof over one (1) year, one-half ( $\frac{1}{2}$ ) of one per cent (1%), which rate shall be figured on one (1) average year's rental of the entire term.

What to Charge if Lease calls for a Net Rental:

*Rule 5.* In figuring commissions to be charged on leases where the rental to be received by the Lessor is net, that is to say, where the Lessee agrees to pay taxes and fire insurance premiums, in addition to the rental named in the lease, charge two per cent (2%) of the term rental.

When Lease contains Privilege of Renewal:

*Rule 6.* When the lease gives the Lessee a privilege of renewal, the charge shall be made for the actual term of the lease. If the Lessee later avails himself of the privilege of renewal, whether strictly according to the terms expressed in the lease or not, the agent shall also be entitled to a commission on the extended period. This additional commission shall be the difference between the amount of commission due for the entire term, including the extended period and the amount of commission previously paid. The additional commission shall be paid the agent at the time of renewal.

Where Renewal of Lease is Negotiated by Agent:

*Rule 7.* Where renewals of leases are negotiated and the agent does not collect the rent, he shall charge the regular rates prescribed in this Section, the same as if the leases were negotiated with new tenants.

Minimum Charge of Leasing Residence Property:

*Rule 8.* The minimum charge to be made in any case for leasing residence property shall be Ten Dollars (\$10).

Where the Lease contains Option to Purchase:

*Rule 9.* Should there be a clause in the lease giving the Lessee an option to purchase the property demised, whether or not the purchase is made exactly on the terms stipulated in the lease, the owner shall pay the agent who negotiated the lease, three per cent (3%) on the purchase price, to be paid when the sale is closed, after deducting from the said commission on the sale the unexpired commission already paid, for the negotiation of the lease. (See Rule 35, Sec. 5.)

**SECTION 2.**—Charges for negotiating leases which contemplate the erection of new buildings.

Where Lease contemplates Erection of New Building:

*Rule 10.* The charge for negotiating leases which contemplate the erection of a building for a tenant, shall be three per cent (3%) on the value of the land as calculated in the making of the lease, and three per cent (3%) on the cost of the proposed building and appurtenances.

Charges for procuring tenants under the conditions mentioned in the foregoing Sections 1 and 2 are to be made at the rates stipulated, unless there shall have been a previous agreement between the owner and the agent for the collection of rent.

**SECTION 3.**—Charges for management of property where agent collects the rent, makes leases, repairs, etc.

Charges for Store, Loft, Office, Residence or Other Property:



**Rule 11.** The regular rate of commission for renting and collection of rents shall be six per cent (6%).

**Charges on Disbursements:**

**Rule 12.** In the management of property under this section the agent shall be entitled to charge on disbursements as follows, to-wit: On amounts paid out for taxes on improved property one per cent (1%), and on unimproved property two and one-half per cent (2½%), no charge to be less than One Dollar (\$1). Members shall have the right to charge for special services not contemplated under ordinary agency.

**Rule 13.** For negotiating new leases and for the renewals of old leases the charge shall be in accordance with the circumstances and services performed, and shall be in addition to the amount expended for advertising.

**When Collection of Rents is Withdrawn:**

**Rule 14.** Where the collection of rents on property is withdrawn from an agent, such agent shall be entitled to charge for unexpired term of any leases he may have made or renewed during his agency, at the rates specified in Section 1 of Article 1 hereof.

**Agents may take Management on Other Basis:**

**Rule 15.** Agents may take the management of buildings and charge the regular Board Rate for making new leases as prescribed in Sections 1 and 2 hereof, and in their discretion reduce the charge hereinbefore provided in this section for renting and collecting. This policy is recommended to members for the reason that it places them in position to pay commissions to other brokers, who may assist them in making leases.

**For the Transfer or Assignment of Leases:**

**Rule 16.** For transferring or assigning leases the charge shall be in proportion to the service rendered, but in no event shall same be less than Five Dollars (\$5) for leases on residence property and Fifteen Dollars (\$15) for leases on business property.

**SECTION 4. Ground Leases.**—The following charges shall be made for ground leases whether the agent is managing and collecting rents on the property at the time of making lease or not.

**Where the Term is 5 Years or less:**

**Rule 17.** For making an original lease, or a sub-lease thereof, where the term of lease is five (5) years or less, charge in accordance with Section 1 of this article.

**Where the Term is over 5 and does not exceed 15 Years:**

**Rule 18.** For making an original lease, or sub-lease thereof, where the term of lease is over five (5) years and does not exceed fifteen (15) years, charge on the total rent for the term, 2 per cent (2%).

**Where the Term exceeds 15 Years:**

**Rule 19.** For making an original lease, or a sub-lease thereof, where the term of lease exceeds fifteen (15) years, charge on the value of the ground as determined by capitalizing the annual ground rent on a four per cent (4%) basis, three per cent (3%) commission.

**If Annual Ground Rent is not Uniform:**

**Provision (A) of Rule 19.** If the annual ground rental during the entire term of the lease is not uniform, the charge shall be made on the value of the land as determined by the average annual ground rental capitalized as aforesaid.

**If Lease contains Provision for Reappraisalment:**

**Provision (B) of Rule 19.** If the lease contains a clause providing for reappraisalment of the ground by appraisers during the term of the lease, the average annual rental between the date of lease and the date set for the first appraisalment shall be taken as the basis on which to compute the total rental for the entire term.

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If Other Consideration is Paid by Lessee in Addition to Rent:

*Rule 20.* In any case if cash or other consideration is paid in addition to the ground rent, the amount of such cash, or value of such consideration, shall be added to and become a part of the capitalized value on which the charge shall be figured.

SECTION 5.—Charges for Making Sales of Real Estate:

*Rule 21.* On a sale of \$1,500 or less 6%, but no charge shall be less than \$25.00.

*Rule 22.*

On a sale of over \$1,500 up to and including \$2,000.....	\$100.00
On a sale of over \$2,000 up to and including \$2,500.....	125.00

*Rule 23.*

On a sale of over \$2,500 up to and including \$3,000.....	150.00
On a sale of over \$3,000 up to and including \$3,500.....	175.00
On a sale of over \$3,500 up to and including \$4,000.....	200.00

*Rule 24.*

On a sale of over \$4,000 up to and including \$5,000.....	220.00
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*Rule 25.*

On a sale of over \$5,000 up to and including \$6,000.....	230.00
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*Rule 26.*

On a sale of over \$6,000 up to and including \$7,000.....	240.00
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*Rule 27.*

On a sale of over \$7,000 up to and including \$8,000.....	250.00
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*Rule 28.*

On a sale of over \$8,000 up to and including \$9,000.....	265.00
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*Rule 29.*

On a sale of over \$9,000 up to and including \$10,000.....	300.00
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*Rule 30.*

On a sale of over \$10,000 three per cent (3%).

*Rule 31.* Commission on sales of industrial property, five per cent (5%).

The above schedule does not apply to the handling of subdivisions where the charge shall be a matter of contract.

Selling Acre and Farm Property:

*Rule 32.* In selling or exchanging acre property, the charge shall be not less than five per cent (5%).

Selling Leaseholds:

*Rule 33.* For selling leaseholds of buildings, or parts thereof, charge for the unexpired term of the lease the same rates as are provided in Section 1 of Article 1, as if a new lease were made, plus twenty per cent (20%) of the bonus. For selling Ground Leases and Improvements, charge 4 per cent on the amount of the sale price of the leasehold interest and improvements, plus 1½% on the value of the ground as determined by capitalizing on a 4 per cent basis the annual ground rental being paid at the time of sale.

Exchanges:

*Rule 34.* In case of exchange of property, a full commission, based upon the sale price, shall be paid by each party, the same as if a sale of each property had been made.

What Shall Constitute:

*Rule 35.* All charges herein provided for the sale or exchange of real estate and the sale of leaseholds and buildings, shall be based upon the sale price, meaning thereby that if the sale is made subject to a mortgage or mortgages, the sale price shall be construed to mean the price of the equity, plus the encumbrances.

SECTION 6.—Charges for Making Loans:

*Rule 36.* On Loans on improved property, other than Bond issues, the mort-

gagor shall pay not less than  $3\frac{1}{2}\%$  on the amount of the loan, and in addition thereto Recorder's fees for recording the necessary documents, the cost of continuation of the Abstract Title brought down to include the record of Deed securing the loan, the attorney's fees for the examination of the Title or Title Guaranty Policy in lieu thereof; or expenses involved in the registration of property under the Torrens System including filing fees at Registrar's office; the minimum commission to be \$25.

*Rule 37.* On loans on improved property, 6% on amount of loan; minimum commission to be \$25.

*Rule 38.* On bond issues the mortgagor shall pay the person or firm financing same not less than  $1\frac{1}{4}\%$  per annum for the term of the loan on the amount of the bond issues, and in addition thereto all other charges specified in the preceding paragraphs of this section, including the cost of printing and certifying the bond issue.

*Rule 39.* For renewal of loans the mortgagor shall pay at the same rate of commission as provided in the preceding paragraphs of this section.

#### SECTION 7.—Fees for Valuations:

For making valuations on real estate, the Valuation Committee shall not charge less than the following amounts:

On amounts not exceeding \$10,000, charge \$25.

On amounts over \$10,000 and not exceeding \$30,000, charge \$25 on the first \$10,000 and \$2 per thousand or major fraction thereof on excess up to and including \$30,000.

On all amounts over \$30,000 and not exceeding \$200,000, charge \$1 per thousand or major fraction thereof on excess over \$30,000, with a further charge of 75 cents per thousand or major fraction thereof on amounts over \$200,000.

IN VALUING LEASEHOLDS, fees or undivided interest, the charges shall be based on the value of the entire property of which the leasehold, fee or undivided interest forms a part.

### No. 74

## BOSTON REAL ESTATE EXCHANGE

INCORPORATED 1889

BOSTON, MASSACHUSETTS

## SCHEDULE OF BROKER'S COMMISSIONS

(In the absence of special agreement.) Adopted by the Board of Directors, February 27, 1920. In effect April 1, 1920.

### BOSTON PROPER (as defined below)

SALES	Minimum
$2\frac{1}{2}\%$ up to \$40,000 and 1% on the balance.....	\$100
Vacant land west of Massachusetts Ave. and vacant land in that part of South Boston included in "Boston Proper," 3%.....	100
EXCHANGES	
Commissions as above paid by both parties.	
MORTGAGES	
2% up to \$10,000 and 1% on the balance.....	\$25
Second Mortgages, 2 %.....	25
Construction Mortgages, 2%.....	25

## 304 REAL ESTATE PRINCIPLES AND PRACTICES

### LEASES

BUSINESS PREMISES, 3% on rent for a year and 1% on rent for balance of term .....	\$25
Less than one year or tenant-at-will	
Over \$50 a month, 35% of a month's rent.....	25
At \$50 a month or less, 50% of a month's rent.....	10
RESIDENCES AND APARTMENTS, 4% on rent for a year (or a season) and 1% on rent for balance of term.....	25
Tenant-at-will, same as Business Premises.	

### MANAGEMENT

ON AMOUNTS COLLECTED BY AGENT	
Tenements and Apartment Houses.....	6%
Other Properties .....	5%
ON COST OF IMPROVEMENTS SUPERVISED BY AGENT.....	5%
"Boston Proper" extends to the southerly lines of estates abutting on the southerly side of Massachusetts Avenue from the Roxbury Canal to the N. Y., N. H. & H. railroad location, and then to the centre line of Ruggles Street and the Fenway from said railroad location to Brookline Avenue, and across the Riverway to the centre line of St. Mary's and Ashby Streets to the Charles River, and includes also that part of South Boston bounded by Boston Harbor, the Reserved Channel, E Street, West 1st Street, Dorchester Avenue and Fort Point Channel.	

### SUBURBS

(as defined below)

SALES	Minimum
IMPROVED PROPERTY, 3½% up to \$15,000 and 2½% on next \$185,000 and 1% on the balance.....	\$100
UNIMPROVED PROPERTY, 5% up to \$50,000 and 2½% on next \$150,000 and 1% on the balance.....	25
FARMS, 6% up to \$10,000 and 5% on the balance.....	200
FACTORY PROPERTY, 6%.....	200

EXCHANGES. Commissions as above paid by both parties.

### MORTGAGES

2% up to \$100,000 and 1% on the balance.....	\$25
Second Mortgages, 2%.....	25
Construction Mortgages, 2%.....	25

### LEASES

BUSINESS PREMISES, 4% on rent for a year and 1% on rent for balance of term .....	\$25
Less than one year or tenant-at-will	
Over \$30 a month, 45% of a month's rent.....	15
At \$30 a month or less, 50% of a month's rent.....	10
RESIDENCES AND APARTMENTS, 5% on rent for a year (or a season) and 1% on rent for balance of term.....	15
Tenant-at-will, same as Business Premises.	
ENTIRE FACTORY PROPERTY, ALSO LAND AND WHARVES, 5% on rent for a year and 2½% on rent for balance of term.....	25

### MANAGEMENT

ON AMOUNTS COLLECTED BY AGENT	
Tenements and Apartment Houses.....	6%
Other Properties .....	5%
Monthly rents under \$15 and weekly rents.....	10%
ON COST OF REPAIRS AND IMPROVEMENTS SUPERVISED BY AGENT.....	5%

"Suburbs" include all districts of Boston outside "Boston Proper," and the following: Arlington, Belmont, Brookline, Cambridge, Chelsea, Dedham, Everett, Malden, Medford, Melrose, Milton, Newton, Quincy, Revere, Somerville, Waltham, Watertown, Winchester and Winthrop.

## OUTSIDE OF SUBURBS

SALES	<i>Minimum</i>
6% up to \$10,000 and 5% on the balance.....	\$200
North Shore, 5% up to \$25,000 and 2½% on the balance.....	100
South Shore, 5%.....	100
Factory Property, 6%.....	200

EXCHANGES. Commissions as above paid by both parties.

## MORTGAGES

3% up to \$20,000 and 2% on next \$80,000 and 1% on the balance..... \$25

## LEASES

5% on rent for a year (or a season) and 2½% on rent for balance of term ..... \$25

## Tenant-at-will

Over \$30 a month, 45% of a month's rent..... 15

At \$30 a month or less, 50% of a month's rent..... 10

## TAXES PAID BY LESSEES

Taxes on leased premises to be paid by Lessees shall be treated as part of the rent on which broker's commissions are chargeable, using the taxes for the current year when ascertainable, otherwise those for the previous year, as a basis. In case of leased premises not previously assessed, the taxes may be estimated or the assessment thereof awaited.

## LONG TERM LEASES

On a lease for a term of more than 21 years, the commission shall be computed on the first 21 years of the term only.

## SALES OPTIONS IN LEASES

In case of a lease containing an option to purchase, the broker is entitled in any event to a commission, as herein provided, for negotiating the lease. If the option to purchase is exercised, the broker is then entitled to receive from the original lessor an additional commission, if any be necessary, to make the total commissions equal a commission on the sale plus a commission on the lease up to the time of the transfer of title.

## RENEWALS OF LEASES

When a broker is employed to renew a lease, he is entitled to a full commission if the lease is renewed with an increase of rent, or to a half commission if renewed without increase of rent.

## EXTENSIONS OF LEASES

When a right to extend a lease, as provided therein, is exercised, the broker who negotiated the lease is entitled to receive from the original lessor a commission on such extension; but the total commissions on lease and extensions shall not exceed the amount chargeable for both considered as one term.

## SALE OF LEASE, GOOD-WILL OR PERSONAL PROPERTY

The broker is entitled to a commission of 5% of the amount paid therefor, in addition to a regular commission on the lease.

## PAYMENTS FOR OPTIONS

In case of options not availed of, the broker is entitled to receive one-half of the amount paid for the option, or one-half of a regular commission on the proposed transaction, whichever is the lessor.

**SCHEDULE OF COMMISSIONS AND CHARGES****Adopted by the Philadelphia Real Estate Board**

In the absence of any contract to the contrary, the following rates of commission shall obtain, based on the total consideration, including all encumbrances thereon; irredeemable ground rents to be capitalized at 6%.

**PURCHASES AND SALES  
CITY**

1. For buying or selling improved real estate in the City of Philadelphia 2½%  
Except:

- (a) Hotels, office buildings, clubs, moving picture halls, garages, stables, theatres, schools, institutional property, churches, saloons, apartment houses or flats, factories, warehouses, mills, industrial sites, railroad and waterfront or wharf properties, and all industrial and other specialty property, on each of which the charge shall be ..... 5%
- (b) Ground or farms situate in Philadelphia..... 5%

**FOR THE DISTRICTS OF GERMANTOWN, MOUNT AIRY, CHESTNUT HILL, OAK LANE, OVERBROOK, FRANKFORD, ROXBOROUGH AND OTHER SEMI-SUBURBAN LOCATIONS**

2. For buying or selling improved real estate..... 3%  
Except:

- (a) Hotels, office buildings, clubs, moving picture halls, garages, stables, theatres, schools, institutional property, churches, saloons, apartment houses or flats, factories, warehouses, mills, industrial sites, railroad and waterfront or wharf properties, and all industrial and other specialty property, on each of which the charge shall be ..... 5%
- (b) Ground or farms..... 5%

**SUBURBAN**

(Montgomery and Delaware Counties)

3. For buying or selling improved real estate..... 4%  
Except:

- (a) Hotels, office buildings, clubs, moving picture halls, garages, stables, theatres, schools, institutional property, churches, saloons, apartment houses or flats, factories, warehouses, mills, industrial sites, railroad and waterfront or wharf properties, and all industrial and other specialty property, on each of which the charge shall be ..... 5%
- (b) Farms and suburban ground..... 5%

In all other adjacent counties the charge for all classes of property shall be ..... 5%

**RULES FOR SELLING AND PURCHASING—CITY AND SUBURBAN**

4. For selling real estate at auction the commission to be charged shall be the same as at private sale, and, in addition thereto, the owners shall pay for all advertising.

5. The minimum commission of any sale or purchase shall be \$50.
6. In case of exchange of property a commission as per rates given herein shall be paid by each party, based on the valuations agreed upon by the parties at the time of signing the agreement.
7. Owner to pay for all special advertising in connection with selling, exchanging or renting of property.
8. For services rendered in addition to negotiating sale, such as attending to clearing objections from settlement certificate, arranging for settlement, and such other details as are necessary to complete the settlement, the broker shall be entitled to compensation, the same to be regulated by the services rendered, but the minimum charge to be not less than \$5.00.
9. The commission has been earned by the agent, and is due and payable when the agent secures a purchaser who is accepted by the seller, or secures a purchaser upon the terms authorized by the seller. When agent acts for purchaser the same rules are to apply.

## LEASING

## WHEN RENTS ARE COLLECTED BY THE AGENT

10. For negotiating leases when the agent collects the rent, the commission on all classes of property shall be 5% on the amount of rent collected.

## WHEN RENTS ARE NOT COLLECTED BY THE AGENT

11. *Stores and Dwellings.* For negotiating leases for store property and residence property and where buildings are already erected, or where buildings are to be erected for the use of lessee. If for term of one year or less, 3% on the annual rental; if in excess of one year, 3% on the rental of the first year, and 1% on the rental of each additional year.
12. *Specialty Buildings and Ground.* For negotiating leases for office space apartments or flats, for floor space in lofts and manufacturing buildings, industrial sites, warehouses, factories, mills, garages, stables, moving picture halls, saloons, waterfront and wharf properties, farms, or vacant ground, and all industrial and other specialty property, if for the term of one year or less, the charge shall be 5% on the gross annual rental. If in excess of one year, the charge shall be 5% on the gross amount due for the first year's rent and 2% additional on the gross rental for each succeeding year.
13. *Furnished Dwellings, etc.* For leasing furnished dwellings and furnished or unfurnished apartments in the City of Philadelphia (lessor to furnish inventory if required), charge shall be 5% on the total rental with a minimum charge of \$25.00.

## FOR THE DISTRICTS OF GERMANTOWN, MOUNT AIRY, CHESTNUT HILL, OAK LANE, OVERBROOK, FRANKFORD, ROXBOROUGH AND OTHER SEMI-SUBURBAN LOCATIONS

Same as above for negotiation of leases for one month or less. For leases for more than one month rates are same as suburban.

14. *Suburban.* For negotiating leases on suburban property, either furnished or unfurnished, or vacant ground and farms, if for the term of one year or less, the charge shall be 5% on the total year's rent.
15. If for a term in excess of one year, the charge shall be an amount equal to 5% of the first year's rent, plus 3% of the second year's rent, plus 2% of the third year's rent, plus 1% on annual rent of each succeeding year.

## RULES FOR LEASING—CITY AND SUBURBAN

16. When the lease gives the lessee an option of renewal, the charge shall be made for the actual term of the lease. If the lessee later avails himself of the privilege of renewal, whether strictly according to the terms expressed in the lease or not, the agent shall also be entitled to a commission on the extended period. This additional commission shall be the difference between the amount of commission due for the entire term, including the extended period, and the amount of commission previously paid. The additional commission shall be paid the agent at the time of renewal.

17. Where renewals of leases are negotiated by the agent, and the agent does not collect the rent, he shall charge the regular rates, the same as if lease were negotiated with new tenant.

18. The minimum charge to be made in any case for leasing property shall be \$10.00.

19. Should there be a clause in the lease giving the lessee an option to purchase the property demised, whether or not the purchase is made exactly on the terms stipulated in the lease, the owner shall pay the agent who negotiated the lease the usual commission on the purchase price, to be paid when the sale is consummated, less any portion of commission paid for the unexpired term of the lease.

20. In the event of any property being withdrawn from the agent prior to the expiration of any lease, or leases, made by the said agent, the owner shall pay the said agent at the time of such withdrawal, or the agent may deduct from funds of the owner in said agent's hands a sum equal to the commission chargeable under this schedule for the unexpired term of the lease, as though the agent was at that time securing a tenant for the owner for said unexpired term. (It being understood that on a lease drawn for a period of less than one year the commission due shall be based on the annual rental.)

21. The commission for the term of the lease has been earned by the agent, and is due and payable, when the agent secures a tenant who is accepted by the owner, or secures a tenant upon the terms authorized by the owner.

22. For services rendered in attending to repairs, the broker or agent shall be entitled to charge the lessor 5% of the gross amount expended.

## MORTGAGES

23. *City.* For obtaining loans (including purchase money by agreement with borrower) secured by first mortgage on real estate in the city and county of Philadelphia:

A. On land, farms, vacant lots, hotel, office buildings, clubs, moving picture halls, garages, stables, theatres, schools, institutional property, churches, saloons, apartment houses or flats, factories, warehouses, mills, industrial sites, railroad and waterfront or wharf properties, and all industrial and other specialty property, the charge shall be not less than 3% on the gross amount loaned.

B. Collateral and advance money mortgages by special agreement.

C. On loans secured by any other kind of real estate there shall be a charge of not less than 2% on the amount loaned.

24. *Suburban.* For obtaining loans (including purchase money by agreement with borrower) secured by first mortgage on improved real estate:

In built-up communities in any of the suburbs or in any counties adjoining Philadelphia, the charge shall be not less than 2%.



25. *Farms.* On farms and ground the charge shall be 5%.

26. No loan shall be made for a lower charge than \$25.00.

The above rates for mortgages shall also apply to properties outside of Philadelphia.

27. *Second Mortgage Loans.* For obtaining loans on second mortgage, the charge shall be by special agreement.

28. In all cases the borrower shall pay, in addition to the rates mentioned above, all charges for drawing papers, for examination of title, or title insurance, for fire insurance, recording, etc.

29. If the agent secures a loan on request of the borrower, the borrower shall be liable for the payment of the commission whether the loan be accepted or not.

30. *Renewals.* For securing the renewal or extension of loans the borrower shall pay at the same rate of commission when the term is not less than three years as provided in the preceding paragraphs. For a term less than three years, the charge shall be by special agreement.

31. For collecting mortgage interest and looking after the various stipulations contained in the mortgages, the agent shall make a charge of 5% on amount collected.

32. *Ground Rents.* The rates of commission charged for negotiating ground rents shall be the same as those governing sales or purchases of real estate, based on total amount paid as consideration for the ground rent.

#### EXPERT TESTIMONY

33. For expert testimony the expert will have earned his fee upon delivery of his opinion to his client; and he shall be entitled to make a further charge of not less than \$50.00 per day for attendance before the Board of View, a Master, or in Court.

#### APPRAISEMENTS

34. The Board offers its official appraisal of real estate to its members. The fees for this work are \$15.00 for the first \$5,000 of value; \$1.25 for each \$1,000 above \$5,000 up to and including \$100,000, and \$1 per \$1,000 in excess of \$100,000.

No. 76

### BROKERAGE AGREEMENT

### COOK COUNTY REAL ESTATE BOARD

CHICAGO, ILL., .....19....

To .....

..... hereby grant you for a period of one year from this date, and thereafter until this agreement is revoked in writing, the exclusive right to sell the property described herein, and in consideration of your accepting said agency, and endeavoring to sell said property, ..... agree to pay you a commission of ....per cent of the price obtained, if a purchaser is procured during said period, by you or me, or any one else, upon the terms named, or upon any other terms which I shall accept.

## 310 REAL ESTATE PRINCIPLES AND PRACTICES

If the sale is not made within thirty days, then, upon my written request you are to list said property for sale with all active members of the Cook County Real Estate Board by filing a copy hereof at the Board Rooms.

.....  
(Owner)

Legal description of said property is: .....

### GIVE ALL THE FACTS YOU CAN

.....  
Fill in all the blanks, if possible, and add anything you think affects the value of the property.

BUILDING is a ..... Flat—House—Store and Flat—Store only.

No. .... Street Between ..... and ..... Streets  
No. of Stories ..... Heated by ..... No. of Rooms ..... (If Flats, give number in each Flat separately) ..... Size of Building ..... by ..... feet.  
Built of (Material) ..... with ..... front. Foundation is (Material) .....  
When was the Building Built? .....

INSIDE.—Is the Plumbing old style, or modern, and what is its condition? .....

..... How many Bath Rooms? ..... How many Water Closets? .....

What kind of Wood is the trim? ..... Of what Wood are the Floors? .....

Do you have Mantels? ..... Sideboards? ..... Gas? ..... Gas Ranges? .....

Electric Light? ..... Back Porch? ..... How high is Basement? .....

Kind of Floor? ..... Is there Laundry? ..... If there is a REAR BUILD-

ING, describe it. .... If there is a BARN, describe it. ....

SIZE OF LOT ..... by ..... feet to ..... foot Alley; ..... front.

Are Special Assessments all paid? ..... How much unpaid? \$ .....

What Material is the Street Paving? ..... Sidewalk? ..... Have you

Abstract of Title? ..... Guaranty Policy? ..... Torrens Certificate? .....

What are the Rents per Month? (Give each Flat or Tenement separately) .....

..... Total, \$ ..... per Year

PRICE, \$ ..... Terms ..... INCUMBRANCE, \$ .....

Due ..... 19... at .... per cent per annum interest. ANNUAL EX-

PENSES.—Taxes, \$ ..... Insurance, \$ ..... Water, \$ ..... Gas, \$ .....

Coal, \$ ..... Janitor, \$ ..... Total, \$ .....

WILL EXCHANGE FOR .....

OWNER ..... Address .....

Dated ..... 19.... Telephone No. ....

REMARKS .....

.....

### No. 77

The following three forms may be used in connection with the application for a mortgage loan made through a broker.

No. 71a. should be kept by the broker for his office records.

No. 77b. should be signed by the applicant for the loan and retained by the broker. It contains the agreement for compensation to the broker for placing the loan.

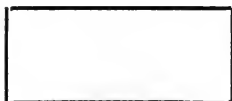
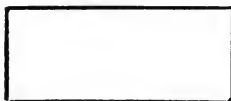
No. 77c. is a form of application sent by the broker to lending institutions and persons whom he seeks to have make the loan.

No. 77a.

## APPLICATION FOR FIRST MORTGAGE LOAN

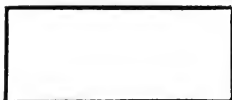
1. Property, No. .... St., Ave., Pl., City of .....  
State of ..... Population of City .....
2. Amount wanted, \$....., at ....%, for ..... years.
3. Full name of individual, corporation or firm, who will execute the Bond and Mortgage. If a corporation, give names of officers.....
4. (If a corporation) Amount of paid-up capital, \$..... Surplus, \$.....  
Please draw accurate diagram of land and building giving exact dimensions and distance from nearest corner. Insert names of streets.

North



West

East



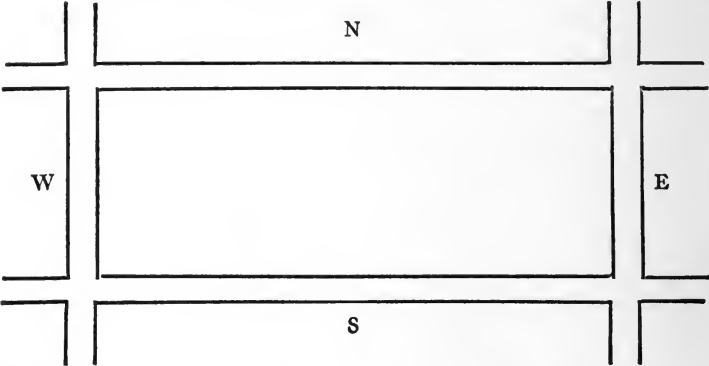
South

Please show on diagram location of other prominent buildings in vicinity.  
Send photograph of building if possible.

5. Size of land.....x..... Size of Building (on ground) .....x.....  
No. of stories high .....
  6. Year built..... If under construction, when will it be completed?.....
  7. State exact nature of construction. What portion of building is steel, reinforced concrete or brick? .....
  8. Purposes of use .....
  9. Describe interior arrangement. If an apartment house, give number of apartments on each floor and number of rooms in each apartment. If an office building, give number of offices on each floor. If stores, how many?  
.....
  10. Number of elevators: Passenger? ..... Freight? .....
  11. How heated?..... How lighted?.....
  12. Total annual gross rent (when fully rented) \$..... Amount now rented..... Total annual expenses, including taxes, but not including interest on mortgages, \$.....
  13. Nearest street railway line to this property .....
  14. Owner's value, Land \$..... Building \$..... Total \$.....
  15. Assessed by City for, Land \$..... Building \$..... Total \$.....  
On what percentage of value is the assessment fixed by Board of Assessors?....
  16. Present mortgages }\$....., at ....%, held by ....., due ..... 19..  
on property }\$....., at ....%, held by ....., due ..... 19..  
Will holders of above mortgages accept payment? .....
  17. Who will show property?..... Address.....
  18. Business of borrower .....
- Name of applicant .....
- Address .....
- Telephone number.....

DESCRIPTION OF LOAN

Amount, \$..... at .... per cent for ..... years. Bond of ..... secured by ..... mortgage covering premises shown on diagram and known as Nos. .... Street.  
Dimensions of Ground ..... Dimensions of Building .....  
Number of Stories.....Building Materials.....Purposes of Use.....  
Value of Ground, \$..... Value of Building, \$..... Total, \$.....  
Assessed Value: Land, \$..... Building, \$..... Total, \$.....  
Amount of Present Mortgage, \$..... Annual Rent, \$.....



REMARKS:

.....  
.....  
The undersigned desiring to obtain the loan described above hereby employs ..... as broker to endeavor to obtain said loan, and said ..... hereby accepts such employment, it being agreed that such employment shall continue from now until the ..... day of ..... at 6 P. M. and that during that time the undersigned will not endeavor to obtain such loan through any other source. If the loan be obtained, the undersigned shall pay said ..... the sum of \$..... to cover its commission, disbursements for title insurance, survey, drawing bond and mortgage and any other necessary papers, mortgage recording tax, recording fees, except the cost of satisfaction of existing liens. If said ..... find a party ready and willing to make such loan but who declines to make the same because the title is defective or because the Title Company examining the title declines to insure the title, the undersigned shall pay said sum. If before the expiration of the period of this employment the undersigned revoke this agreement or through any other source obtain said loan, the same sum shall be paid as if said loan had been obtained through ..... In addition to the above ..... agree to pay any war stamp tax that may be necessary. The loan is to be closed within thirty days after its acceptance.

.....

Address.....

No. 77c.

New York.....19....

LOAN WANTED OF \$..... at ....% Interest per annum for .....  
 years on First Mortgage secured by the Bond of ..... on the prop-  
 erty described below. Location ..... Dimensions of Ground .....  
 Dimensions of Building ..... No. of stories ..... Materials.....  
 Purpose of use..... Owner's Valuation, \$..... Rent, \$.....  
 Remarks .....


Nearest Station:

Subway .....  
 Elevated .....  
 Surface Line .....

No. 78

## BROKER'S LISTING CARD

FOR SALE

TO LET

FOR EXCHANGE

## DESCRIPTION OF PREMISES

Street No. of Property .....  
 Location of Property .....  
 Between .....  
 Size of { Lot.....Valuation of Land..... } Total .....  
           { House.....Valuation of Building..... }  
 Number of Stories ..... Extension ..... Number of Rooms ..... Material .....  
 Decorated ..... Price ..... Terms ..... Mortgage:  
     1st ..... at ..... %, due ..... Held by .....  
     2d ..... at ..... %, due ..... Held by .....  
 Rents:  
     Store..... Leased to ..... 3d Floor ..... leased to .....  
     1st Floor..... Leased to ..... 4th Floor ..... leased to .....  
     2d Floor..... Leased to ..... Total .....  
 Improvements ..... Heated by .....  
 Hot Water Supply? No... Yes ... Remarks .....  
 Possession ..... Keys at .....  
 Owner's Name .....  
 Residence Address .....

**AGENCY CONTRACT**

THIS AGREEMENT, made this ..... day of ..... 19.... Between ..... hereinafter termed the Owner, and ADOLPH SPEAR & COMPANY, a domestic corporation, hereinafter termed Agent, WITNESSETH

WHEREAS the Owner is seized of the property known as No. .... in the Borough of Manhattan, City of New York, and .....

WHEREAS the Agent is engaged in the management of Real Estate and general Real Estate brokerage business in the City of New York; and,

WHEREAS, the Owner is desirous of engaging the services of the Agent as sole agent in the manner and upon the terms hereinafter set forth;

Now therefore in consideration of the premises and the sum of One (\$1.00) Dollar, the receipt of which is hereby acknowledged, and other good and valuable considerations, the parties hereto have agreed as follows:

FIRST.—The Owner does hereby employ and retain the Agent as sole agent for and in connection with the aforesaid property for the term beginning the ..... day of ..... 192., and to end on the ..... day of ..... 192..

SECOND.—It is further understood and agreed that all applications for space in the said building are to be referred to the Agent, it being the intention that all leases and other arrangements for occupancy in the said building or portions thereof, shall be referred to and closed by the Agent, the Owner hereby conferring the necessary authority to Agent for the purposes aforesaid, and the Agent shall receive a stipulated commission therefor, as hereinafter set forth.

THIRD.—The owner agrees to pay the Agent the usual and customary commission in vogue at the time of making leases for space in said building as promulgated by the Real Estate Board of New York; if a lease be made by a broker other than the Agent, then this broker shall be compensated out of the commission, as above set forth, as and when the same is received by the Agent and no additional charge shall be made by the Agent to the Owner.

FOURTH.—The Owner also agrees to pay the Agent the aforesaid commission on the renewal of any leases.

FIFTH.—It is agreed that all commissions that become due hereunder to the Agent, shall in each instance be paid when the leases have been executed.

SIXTH.—The Owner further agrees to pay the Agent two and one-half per cent of the amount of all money collected, which shall be deducted each month; a statement shall be rendered monthly by the Agent to the Owner, which statement shall show all income and disbursements, and a check for the balance shall be submitted by the Agent to the Owner; for the said commission, the Agent hereby agrees to collect the rents and otherwise generally manage the property.

SEVENTH.—It is further understood and agreed that the Agent shall employ the necessary help, make all necessary purchases, advertise when necessary, contract for and make necessary repairs and the payment therefor, and pay for all expenses in relation to the operation and maintenance of the building for the account of the Owner, such expenses to be deducted monthly and vouchers therefor shall accompany each monthly statement.

EIGHTH.—The Agent is hereby authorized to take any action at law or equity which it should deem necessary or appropriate for the purpose of enforcing collection of money due from tenants or to repossess any portion of the premises which may be necessary or convenient for the management thereof.

NINTH.—It is further understood and agreed that the Agent shall place for the account of the Owner, supervise and attend to any and all insurance of any kind or nature that may be needed in connection with the aforesaid property, and any "renewals" of insurance policies as may become due; it is further

understood and agreed that the Owner shall include as an assured party, the name of the Agent in the policies covering general, elevator liability and compensation insurance.

TENTH.—It is further agreed that upon the termination of this agreement, either by limitation, or by giving notice in the manner hereinafter provided, said Agent shall be entitled to receive one per centum (1%) upon the entire rents that may thereafter become due under any lease or renewal negotiated and consummated by said Agent down to the expiration of said lease or renewal, and said percentage shall, in that event, be and become forthwith due and payable.

ELEVENTH.—It is further understood and agreed that unless written notice is given by either party hereto to the other on or before the first day of the third month preceding the expiration hereof, to the effect that it is the desire of such party not to renew the same, then this contract shall continue in force from year to year.

This agreement shall bind and benefit the personal representatives, successors and assigns of the parties.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, these presents by the properly authorized parties and the appropriate seals thereto duly affixed, the day and year first above written.

Witness:

[L. S.]

.....  
As to Owner

[L. S.]

.....  
As to Agent

ADOLPH SPEAR & COMPANY.

By.....  
President.

No. 80

# COMPLAINT

Building.....	Date.....
Tenant.....	Letter.....
Location.....	Telephone.....
Nature.....	Person.....

.....  
.....  
.....

Referred to..... Signed.....

Disposal .....

.....  
.....

This complaint must be investigated at once and report made of your finding.

316 REAL ESTATE PRINCIPLES AND PRACTICES

No. 81

BUILDING MANAGER'S ORDER FORM

Order No.....

Mr.....

Address..... Date.....19....

Please ..... Building

.....

.....

.....

.....

EMPLOYEE: Enter Mechanics | .....

time, and material received on | .....

this order, sign and return at | .....

once. | .....

.....Mechanic.....Days.....Hrs.

.....Helper .....Days.....Hrs.

Overtime, Mechanic.....Days.....Hrs.

" Helper .....Days.....Hrs.

Signed .....Days.....Hrs.

No. 82

APPRAISAL OF REAL ESTATE

New York.....19....

Mr. ....

.....

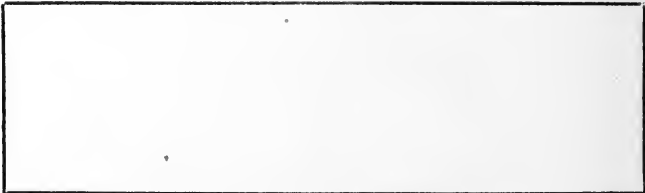
Dear Sir:

We value the premises situated at ..... as shown on the diagram;

together with the improvements thereon, consisting of .....

.....

at .....



This appraisal is made on the understanding, and is accepted on the condition that no member of the corporation making it, or any one connected with the corporation shall be called upon to give testimony concerning the value of the property appraised, or to give any information relating to it in or before any proceedings at law, or otherwise.

.....



No. 83

## THE HOFFMAN RULE FOR THE VALUATION OF SHORT LOTS

<i>A lot of ground 25 x 100 feet</i> \$1,000		<i>Aggregate</i> <i>per cent.</i>
10 x 25 feet	\$160.....	16
15 x 25 "	235.....	23.50
20 x 25 "	310.....	31
25 x 25 "	375.....	37.50
30 x 25 "	440.....	44
35 x 25 "	500.....	50
40 x 25 "	560.....	56
45 x 25 "	615.....	61.50
50 x 25 "	670.....	67
55 x 25 "	715.....	71.50
60 x 25 "	760.....	76
65 x 25 "	800.....	80
70 x 25 "	840.....	84
75 x 25 "	875.....	87.50
80 x 25 "	910.....	91
85 x 25 "	935.....	93.50
90 x 25 "	960.....	96
95 x 25 "	980.....	98
100 x 25 "	1,000.....	100

## DAVIES RULE

Table based on the following formula, for estimating the value of strips of lot 25 feet wide, from one inch to one hundred and twenty-five feet, for each inch of depth, and from one hundred and twenty-five feet, to two hundred feet for each foot of depth,

$$Y = \sqrt{1.45 (X + .0352)} - .226$$

<i>Depth</i> <i>Ft. In.</i>	<i>Ratio</i>	<i>Depth</i> <i>Ft. In.</i>	<i>Ratio</i>	<i>Depth</i> <i>Ft. In.</i>	<i>Ratio</i>	<i>Depth</i> <i>Ft. In.</i>	<i>Ratio</i>
1"	.00268	1"	.10603	1"	.18417	1"	.24965
2"	.00520	2"	.10784	2"	.18564	2"	.25091
3"	.00780	3"	.10960	3"	.18712	3"	.25219
4"	.01052	4"	.11141	4"	.18852	4"	.25340
5"	.01291	5"	.11322	5"	.19002	5"	.25470
6"	.01543	6"	.11463	6"	.19148	6"	.25596
7"	.01792	7"	.11677	7"	.19292	7"	.25717
8"	.02037	8"	.11852	8"	.19453	8"	.25840
9"	.02283	9"	.12021	9"	.19580	9"	.25971
10"	.02523	10"	.12200	10"	.19717	10"	.26090
11"	.02762	11"	.12385	11"	.19864	11"	.26218
1'	.03001	5'	.12549	9'	.20008	13'	.26343
1"	.03236	1"	.12719	1"	.20143	1"	.26466
2"	.03469	2"	.12889	2"	.20279	2"	.26588
3"	.03690	3"	.13060	3"	.20431	3"	.26712
4"	.03927	4"	.13229	4"	.20565	4"	.26829
5"	.04155	5"	.13396	5"	.20710	5"	.26955
6"	.04380	6"	.13565	6"	.20850	6"	.27078
7"	.04603	7"	.13731	7"	.20983	7"	.27195
8"	.04822	8"	.13896	8"	.21126	8"	.27320
9"	.05044	9"	.14063	9"	.21265	9"	.27441
10"	.05260	10"	.14226	10"	.21392	10"	.27557
11"	.05473	11"	.14389	11"	.21539	11"	.27681
2'	.05691	6'	.14554	10'	.21676	14'	.27803
1"	.05903	1"	.14768	1"	.21812	1"	.27917
2"	.06104	2"	.14876	2"	.21947	2"	.28043
3"	.06325	3"	.15038	3"	.22084	3"	.28161
4"	.06532	4"	.15192	4"	.22212	4"	.28275
5"	.06739	5"	.15357	5"	.22353	5"	.28397
6"	.06945	6"	.15518	6"	.22488	6"	.28517
7"	.07148	7"	.15674	7"	.22616	7"	.28630
8"	.07349	8"	.15831	8"	.22754	8"	.28751
9"	.07552	9"	.15989	9"	.22888	9"	.28870
10"	.07751	10"	.16145	10"	.23016	10"	.28982
11"	.07949	11"	.16291	11"	.23153	11"	.29103
3'	.08147	7'	.16456	11'	.23285	15'	.29221
1"	.08343	1"	.16610	1"	.23415	1"	.29333
2"	.08536	2"	.16763	2"	.23546	2"	.29453
3"	.08731	3"	.16918	3"	.23678	3"	.29569
4"	.08923	4"	.17064	4"	.23803	4"	.29680
5"	.09114	5"	.17221	5"	.23937	5"	.29800
6"	.09305	6"	.17374	6"	.24068	6"	.29916
7"	.09493	7"	.17524	7"	.24192	7"	.30026
8"	.09680	8"	.17673	8"	.24325	8"	.30144
9"	.09868	9"	.17825	9"	.24455	9"	.30260
10"	.10052	10"	.17972	10"	.24582	10"	.30373
11"	.10236	11"	.18118	11"	.24708	11"	.30483
12"	.10417	12"	.18263	12"	.24832	12"	.30591
13"	.10595	13"	.18407	13"	.24955	13"	.30697
14"	.10771	14"	.18550	14"	.25077	14"	.30801
15"	.10945	15"	.18692	15"	.25198	15"	.30903
16"	.11118	16"	.18833	16"	.25318	16"	.31003
17"	.11289	17"	.18973	17"	.25437	17"	.31101
18"	.11458	18"	.19112	18"	.25555	18"	.31197
19"	.11626	19"	.19250	19"	.25672	19"	.31291
20"	.11792	20"	.19387	20"	.25788	20"	.31383
21"	.11957	21"	.19523	21"	.25903	21"	.31473
22"	.12121	22"	.19658	22"	.26017	22"	.31561
23"	.12284	23"	.19792	23"	.26130	23"	.31647
24"	.12446	24"	.19925	24"	.26242	24"	.31731
25"	.12607	25"	.20057	25"	.26353	25"	.31813
26"	.12767	26"	.20188	26"	.26463	26"	.31893
27"	.12926	27"	.20318	27"	.26572	27"	.31971
28"	.13084	28"	.20447	28"	.26680	28"	.32047
29"	.13241	29"	.20575	29"	.26787	29"	.32121
30"	.13397	30"	.20702	30"	.26893	30"	.32193
31"	.13552	31"	.20828	31"	.26998	31"	.32263
32"	.13706	32"	.20953	32"	.27102	32"	.32331
33"	.13859	33"	.21077	33"	.27205	33"	.32397
34"	.14011	34"	.21200	34"	.27307	34"	.32461
35"	.14162	35"	.21322	35"	.27408	35"	.32523
36"	.14312	36"	.21443	36"	.27508	36"	.32583
37"	.14461	37"	.21563	37"	.27607	37"	.32641
38"	.14609	38"	.21682	38"	.27705	38"	.32697
39"	.14756	39"	.21800	39"	.27802	39"	.32751
40"	.14902	40"	.21917	40"	.27898	40"	.32803
41"	.15047	41"	.22033	41"	.27993	41"	.32853
42"	.15191	42"	.22148	42"	.28087	42"	.32901
43"	.15334	43"	.22262	43"	.28180	43"	.32947
44"	.15476	44"	.22375	44"	.28272	44"	.32991
45"	.15617	45"	.22487	45"	.28363	45"	.33033
46"	.15757	46"	.22598	46"	.28453	46"	.33073
47"	.15896	47"	.22708	47"	.28542	47"	.33111
48"	.16034	48"	.22817	48"	.28630	48"	.33147
49"	.16171	49"	.22925	49"	.28717	49"	.33181
50"	.16307	50"	.23032	50"	.28803	50"	.33213
51"	.16442	51"	.23138	51"	.28888	51"	.33243
52"	.16576	52"	.23243	52"	.28972	52"	.33271
53"	.16709	53"	.23347	53"	.29055	53"	.33297
54"	.16841	54"	.23450	54"	.29137	54"	.33321
55"	.16972	55"	.23552	55"	.29218	55"	.33343
56"	.17102	56"	.23653	56"	.29298	56"	.33363
57"	.17231	57"	.23753	57"	.29377	57"	.33381
58"	.17359	58"	.23852	58"	.29455	58"	.33397
59"	.17486	59"	.23950	59"	.29532	59"	.33411
60"	.17612	60"	.24047	60"	.29608	60"	.33423
61"	.17737	61"	.24143	61"	.29683	61"	.33433
62"	.17861	62"	.24238	62"	.29757	62"	.33441
63"	.17984	63"	.24332	63"	.29830	63"	.33447
64"	.18106	64"	.24425	64"	.29902	64"	.33451
65"	.18227	65"	.24517	65"	.29973	65"	.33453
66"	.18347	66"	.24608	66"	.30043	66"	.33453
67"	.18466	67"	.24698	67"	.30112	67"	.33451
68"	.18584	68"	.24787	68"	.30180	68"	.33447
69"	.18701	69"	.24875	69"	.30247	69"	.33441
70"	.18817	70"	.24962	70"	.30313	70"	.33433
71"	.18932	71"	.25048	71"	.30378	71"	.33423
72"	.19046	72"	.25133	72"	.30442	72"	.33411
73"	.19159	73"	.25217	73"	.30505	73"	.33397
74"	.19271	74"	.25300	74"	.30567	74"	.33381
75"	.19382	75"	.25382	75"	.30628	75"	.33363
76"	.19492	76"	.25463	76"	.30688	76"	.33343
77"	.19601	77"	.25543	77"	.30747	77"	.33321
78"	.19709	78"	.25622	78"	.30805	78"	.33297
79"	.19816	79"	.25700	79"	.30862	79"	.33271
80"	.19922	80"	.25777	80"	.30918	80"	.33243
81"	.20027	81"	.25853	81"	.30973	81"	.33213
82"	.20131	82"	.25928	82"	.31027	82"	.33181
83"	.20234	83"	.26002	83"	.31080	83"	.33147
84"	.20336	84"	.26075	84"	.31132	84"	.33111
85"	.20437	85"	.26147	85"	.31183	85"	.33073
86"	.20537	86"	.26218	86"	.31233	86"	.33033
87"	.20636	87"	.26288	87"	.31282	87"	.32991
88"	.20734	88"	.26357	88"	.31330	88"	.32947
89"	.20831	89"	.26425	89"	.31377	89"	.32901
90"	.20927	90"	.26492	90"	.31423	90"	.32853
91"	.21022	91"	.26558	91"	.31468	91"	.32803
92"	.21116	92"	.26623	92"	.31512	92"	.32751
93"	.21209	93"	.26687	93"	.31555	93"	.32697
94"	.21301	94"	.26750	94"	.31597	94"	.32641
95"	.21392	95"	.26812	95"	.31639	95"	.32583
96"	.21482	96"	.26873	96"	.31680	96"	.32523
97"	.21571	97"	.26933	97"	.31720	97"	.32461
98"	.21659	98"	.26992	98"	.31759	98"	.32397
99"	.21746	99"	.27050	99"	.31797	99"	.32331
100"	.21832	100"	.27107	100"	.31835	100"	.32263

Depth		Depth		Depth		Depth					
Ft.	In.	Ratio	Ft.	In.	Ratio	Ft.	In.	Ratio			
	1"	.30710		1"	.35898		1"	.40661		1"	.45091
	2"	.30827		2"	.36004		2"	.40760		2"	.45183
	3"	.30941		3"	.36108		3"	.40856		3"	.45272
	4"	.31049		4"	.36207		4"	.40947		4"	.45358
	5"	.31165		5"	.36314		5"	.41045		5"	.45449
	6"	.31279		6"	.36416		6"	.41141		6"	.45539
	7"	.31386		7"	.36514		7"	.41232		7"	.45624
	8"	.31502		8"	.36620		8"	.41329		8"	.45715
	9"	.31614		9"	.36722		9"	.41425		9"	.45804
	10"	.31721		10"	.36820		10"	.41519		10"	.45889
	11"	.31836		11"	.36925		11"	.41612		11"	.45980
17'		.31947	21'		.37027	25'		.41707	29'		.46069
	1"	.32054		1"	.37124		1"	.41797		1"	.46153
	2"	.32167		2"	.37229		2"	.41894		2"	.46244
	3"	.32279		3"	.37330		3"	.41998		3"	.46332
	4"	.32384		4"	.37427		4"	.42078		4"	.46416
	5"	.32497		5"	.37531		5"	.42174		5"	.46507
	6"	.32608		6"	.37632		6"	.42268		6"	.46595
	7"	.32713		7"	.37728		7"	.42358		7"	.46678
	8"	.32825		8"	.37832		8"	.42454		8"	.46768
	9"	.32929		9"	.37932		9"	.42547		9"	.46856
	10"	.33040		10"	.38028		10"	.42636		10"	.46943
	11"	.33151		11"	.38131		11"	.42732		11"	.47030
18'		.33261	22'		.38231	26'		.42825	30'		.47117
	1"	.33358		1"	.38326		1"	.42913		1"	.47200
	2"	.33476		2"	.38428		2"	.43009		2"	.47289
	3"	.33584		3"	.38528		3"	.43101		3"	.47376
	4"	.33687		4"	.38623		4"	.43190		4"	.47469
	5"	.33798		5"	.38725		5"	.43284		5"	.47548
	6"	.33906		6"	.38824		6"	.43377		6"	.47635
	7"	.34002		7"	.38928		7"	.43464		7"	.47717
	8"	.34118		8"	.39020		8"	.43559		8"	.47806
	9"	.34226		9"	.39118		9"	.43651		9"	.47892
	10"	.34328		10"	.39212		10"	.43738		10"	.47975
	11"	.34437		11"	.39313		11"	.43832		11"	.48063
19'		.34544	23'		.39411	27'		.43924	31'		.48149
	1"	.34645		1"	.39505		1"	.44011		1"	.48231
	2"	.34754		2"	.39605		2"	.44104		2"	.48319
	3"	.34860		3"	.39703		3"	.44196		3"	.48405
	4"	.34961		4"	.39796		4"	.44282		4"	.48486
	5"	.35069		5"	.39896		5"	.44376		5"	.48574
	6"	.35175		6"	.39993		6"	.44464		6"	.48659
	7"	.35275		7"	.40086		7"	.44553		7"	.48741
	8"	.35383		8"	.40185		8"	.44646		8"	.48828
	9"	.35487		9"	.40282		9"	.44736		9"	.48913
	10"	.35587		10"	.40374		10"	.44822		10"	.48994
	11"	.35627		11"	.40473		11"	.44915		11"	.49081
20'		.35799	24'		.40570	28'		.45005	32'		.49166

# 320 REAL ESTATE PRINCIPLES AND PRACTICES

Depth		Depth		Depth		Depth					
Ft.	In.	Ratio	Ft.	In.	Ratio	Ft.	In.	Ratio			
	1"	.49247	1"	.53176	1"	.56911	1"	.60478			
	2"	.49334	2"	.53258	2"	.56989	2"	.60553			
	3"	.49418	3"	.53339	3"	.57066	3"	.60627			
	4"	.49499	4"	.53415	4"	.57139	4"	.60696			
	5"	.49585	5"	.53497	5"	.57217	5"	.60771			
	6"	.49670	6"	.53577	6"	.57293	6"	.60844			
	7"	.49750	7"	.53653	7"	.57366	7"	.60914			
	8"	.49836	8"	.53735	8"	.57445	8"	.60988			
	9"	.49920	9"	.53814	9"	.57520	9"	.61061			
	10"	.50000	10"	.53890	10"	.57592	10"	.61130			
	11"	.50086	11"	.53972	11"	.57670	11"	.61205			
33'		.50170	37'		.54051	41'		.57746	45'		.61277
	1"	.50249	1"	.54127	1"	.57818	1"	.61346			
	2"	.50335	2"	.54208	2"	.57895	2"	.61421			
	3"	.50418	3"	.54287	3"	.57971	3"	.61493			
	4"	.50498	4"	.54363	4"	.58043	4"	.61562			
	5"	.50583	5"	.54444	5"	.58119	5"	.61636			
	6"	.50666	6"	.54523	6"	.58195	6"	.61709			
	7"	.50745	7"	.54598	7"	.58267	7"	.61777			
	8"	.50830	8"	.54676	8"	.58344	8"	.61851			
	9"	.50913	9"	.54757	9"	.58419	9"	.61923			
	10"	.50992	10"	.54832	10"	.58491	10"	.61992			
	11"	.51077	11"	.54913	11"	.58568	11"	.62065			
34'		.51159	38'		.54991	42'		.58643	46'		.62137
	1"	.51238	1"	.55066	1"	.58714	1"	.62206			
	2"	.51322	2"	.55146	2"	.58791	2"	.62279			
	3"	.51404	3"	.55225	3"	.58866	3"	.62351			
	4"	.51483	4"	.55299	4"	.58937	4"	.62419			
	5"	.51567	5"	.55379	5"	.59013	5"	.62492			
	6"	.51649	6"	.55457	6"	.59088	6"	.62564			
	7"	.51727	7"	.55531	7"	.59159	7"	.62632			
	8"	.51811	8"	.55611	8"	.59235	8"	.62705			
	9"	.51893	9"	.55689	9"	.59309	9"	.62777			
	10"	.51971	10"	.55763	10"	.59380	10"	.62844			
	11"	.52054	11"	.55843	11"	.59456	11"	.62917			
35'		.52136	39'		.55920	43'		.59530	47'		.62989
	1"	.52213	1"	.55994	1"	.59601	1"	.63056			
	2"	.52296	2"	.56073	2"	.59677	2"	.63129			
	3"	.52378	3"	.56151	3"	.59751	3"	.63200			
	4"	.52455	4"	.56224	4"	.59821	4"	.63268			
	5"	.52542	5"	.56303	5"	.59897	5"	.63340			
	6"	.52619	6"	.56380	6"	.59971	6"	.63411			
	7"	.52696	7"	.56454	7"	.60040	7"	.63478			
	8"	.52779	8"	.56533	8"	.60116	8"	.63551			
	9"	.52860	9"	.56610	9"	.60190	9"	.63622			
	10"	.52936	10"	.56683	10"	.60260	10"	.63690			
	11"	.53019	11"	.56761	10"	.60335	11"	.63761			
36'		.53099	40'		.56838	44'		.60408	48'		.63832

## APPENDIX

321

Depth			Depth			Depth			Depth		
Ft.	In.	Ratio	Ft.	In.	Ratio	Ft.	In.	Ratio	Ft.	In.	Ratio
	1"	.63899		1"	.67189		1"	.70362		1"	.73431
	2"	.63971		2"	.67258		2"	.70429		2"	.73496
	3"	.64041		3"	.67326		3"	.70495		3"	.73560
	4"	.64108		4"	.67390		4"	.70557		4"	.73620
	5"	.64180		5"	.67460		5"	.70624		5"	.73685
	6"	.64250		6"	.67527		6"	.70689		6"	.73748
	7"	.64317		7"	.67592		7"	.70752		7"	.73808
	8"	.64338		8"	.67650		8"	.70818		8"	.73873
	9"	.64459		9"	.67728		9"	.70883		9"	.73936
	10"	.64525		10"	.67792		10"	.70946		10"	.73996
	11"	.64596		11"	.67861		11"	.71012		11"	.74060
49'		.64666	53'		.67929	57'		.71077	61'		.74123
	1"	.64733		1"	.67992		1"	.71139		1"	.74183
	2"	.64804		2"	.68061		2"	.71206		2"	.74248
	3"	.64874		3"	.68129		3"	.71270		3"	.74311
	4"	.64942		4"	.68192		4"	.71332		4"	.74370
	5"	.65011		5"	.68261		5"	.71399		5"	.74435
	6"	.65081		6"	.68328		6"	.71463		6"	.74497
	7"	.65147		7"	.68381		7"	.71525		7"	.74557
	8"	.65218		8"	.68460		8"	.71591		8"	.74621
	9"	.65287		9"	.68527		9"	.71656		9"	.74684
	10"	.65353		10"	.68591		10"	.71717		10"	.74744
	11"	.65424		11"	.68659		11"	.71783		11"	.74808
50'		.65493	54'		.68726	58'		.71848	62'		.74870
	1"	.65559		1"	.68772		1"	.71909		1"	.74930
	2"	.65630		2"	.68858		2"	.71975		2"	.74993
	3"	.65699		3"	.68924		3"	.72040		3"	.75056
	4"	.65764		4"	.68987		4"	.72101		4"	.75115
	5"	.65835		5"	.69055		5"	.72167		5"	.75179
	6"	.65904		6"	.69122		6"	.72231		6"	.75241
	7"	.65969		7"	.69185		7"	.72294		7"	.75301
	8"	.66039		8"	.69253		8"	.72358		8"	.75364
	9"	.66108		9"	.69319		9"	.72426		9"	.75426
	10"	.66174		10"	.69382		10"	.72483		10"	.75486
	11"	.66244		11"	.69450		11"	.72548		11"	.75549
51'		.66312	55'		.69516	59'		.72612	63'		.75611
	1"	.66378		1"	.69579		1"	.72673		1"	.75670
	2"	.66448		2"	.69647		2"	.72739		2"	.75734
	3"	.66516		3"	.69713		3"	.72803		3"	.75795
	4"	.66581		4"	.69777		4"	.72863		4"	.75854
	5"	.66651		5"	.69843		5"	.72929		5"	.75918
	6"	.66719		6"	.69909		6"	.72992		6"	.75979
	7"	.66784		7"	.69972		7"	.73053		7"	.76038
	8"	.66854		8"	.70039		8"	.73118		8"	.76101
	9"	.66922		9"	.70105		9"	.73182		9"	.76163
	10"	.66987		10"	.70167		10"	.73242		10"	.76222
	11"	.67056		11"	.70234		11"	.73307		11"	.76285
52'		.67124	56'		.70300	60'		.73371	64'		.76347

# 322 REAL ESTATE PRINCIPLES AND PRACTICES.

<i>Depth</i>		<i>Depth</i>		<i>Depth</i>		<i>Depth</i>	
<i>Ft. In.</i>	<i>Ratio</i>	<i>Ft. In.</i>	<i>Ratio</i>	<i>Ft. In.</i>	<i>Ratio</i>	<i>Ft. In.</i>	<i>Ratio</i>
1"	.76405	1"	.79292	1"	.82100	1"	.84834
2"	.76466	2"	.79353	2"	.82159	2"	.84892
3"	.76530	3"	.79413	3"	.82217	3"	.84948
4"	.76588	4"	.79469	4"	.82272	4"	.85002
5"	.76651	5"	.79531	5"	.82332	5"	.85060
6"	.76712	6"	.79591	6"	.82390	6"	.85117
7"	.76771	7"	.79647	7"	.82445	7"	.85171
8"	.76833	8"	.79708	8"	.82505	8"	.85229
9"	.76895	9"	.79767	9"	.82562	9"	.85285
10"	.76953	10"	.79825	10"	.82618	10"	.85339
11"	.77015	11"	.79885	11"	.82677	11"	.85396
65'	.77077	69'	.79944	73'	.82735	77'	.85453
1"	.77135	1"	.80001	1"	.82790	1"	.85506
2"	.77197	2"	.80062	2"	.82849	2"	.85564
3"	.77258	3"	.80121	3"	.82907	3"	.85621
4"	.77316	4"	.80178	4"	.82962	4"	.85674
5"	.77379	5"	.80238	5"	.83021	5"	.85731
6"	.77439	6"	.80297	6"	.83078	6"	.85788
7"	.77498	7"	.80354	7"	.83133	7"	.85842
8"	.77560	8"	.80414	8"	.83192	8"	.85898
9"	.77621	9"	.80474	9"	.83250	9"	.85955
10"	.77678	10"	.80530	10"	.83305	10"	.86012
11"	.77740	11"	.80590	11"	.83363	11"	.86066
66'	.77801	70'	.80649	74'	.83421	78'	.86122
1"	.77859	1"	.80705	1"	.83473	1"	.86175
2"	.77921	2"	.80766	2"	.83535	2"	.86232
3"	.77982	3"	.80825	3"	.83592	3"	.86288
4"	.78039	4"	.80881	4"	.83646	4"	.86342
5"	.78101	5"	.80941	5"	.83705	5"	.86399
6"	.78162	6"	.81000	6"	.83762	6"	.86455
7"	.78219	7"	.81060	7"	.83817	7"	.86508
8"	.78281	8"	.81128	8"	.83875	8"	.86565
9"	.78341	9"	.81175	9"	.83933	9"	.86621
10"	.78399	10"	.81230	10"	.83987	10"	.86674
11"	.78461	11"	.81290	11"	.84045	11"	.86731
67'	.78521	71'	.81349	75'	.84102	79'	.86786
1"	.78578	1"	.81407	1"	.84157	1"	.86840
2"	.78640	2"	.81465	2"	.84215	2"	.86895
3"	.78700	3"	.81523	3"	.84272	3"	.86952
4"	.78757	4"	.81579	4"	.84327	4"	.87005
5"	.78818	5"	.81639	5"	.84385	5"	.87062
6"	.78878	6"	.81697	6"	.84442	6"	.87117
7"	.78936	7"	.81753	7"	.84497	7"	.87170
8"	.79997	8"	.81812	8"	.84552	8"	.87227
9"	.79057	9"	.81871	9"	.84611	9"	.87283
10"	.79114	10"	.81926	10"	.84665	10"	.87335
11"	.79175	11"	.81986	11"	.84723	11"	.87392
68'	.79233	72'	.82044	76'	.84780	80'	.87447

<i>Depth</i> <i>Ft. In.</i>	<i>Ratio</i>	<i>Depth</i> <i>Ft. In.</i>	<i>Ratio</i>	<i>Depth</i> <i>Ft. In.</i>	<i>Ratio</i>	<i>Depth</i> <i>Ft. In.</i>	<i>Ratio</i>
1"	.87500	1"	.90103	1"	.92647	1"	.95137
2"	.87557	2"	.90159	2"	.92702	2"	.95190
3"	.87612	3"	.90212	3"	.92754	3"	.95242
4"	.87665	4"	.90264	4"	.92850	4"	.95291
5"	.87721	5"	.90319	5"	.92859	5"	.95344
6"	.87776	6"	.90373	6"	.92912	6"	.95395
7"	.87829	7"	.90425	7"	.92962	7"	.95444
8"	.87895	8"	.90480	8"	.93016	8"	.95497
9"	.87944	9"	.90533	9"	.93068	9"	.95549
10"	.87993	10"	.90584	10"	.93118	10"	.95598
11"	.88047	11"	.90639	11"	.93172	11"	.95651
81'	.88104	85'	.90694	89'	.93225	93'	.95702
1"	.88157	1"	.90745	1"	.93275	1"	.95751
2"	.88213	2"	.90800	2"	.93328	2"	.95804
3"	.88268	3"	.90853	3"	.93381	3"	.95855
4"	.88320	4"	.90904	4"	.93431	4"	.95904
5"	.88376	5"	.90959	5"	.93475	5"	.95957
6"	.88431	6"	.91013	6"	.93538	6"	.96008
7"	.88484	7"	.91064	7"	.93587	7"	.96057
8"	.88519	8"	.91119	8"	.93641	8"	.96110
9"	.88594	9"	.91173	9"	.93694	9"	.96161
10"	.88646	10"	.91225	10"	.93743	10"	.96210
11"	.88703	11"	.91278	11"	.93797	11"	.96262
82'	.88753	86'	.91331	90'	.93849	94'	.96314
1"	.88809	1"	.91383	1"	.93900	1"	.96362
2"	.88865	2"	.91437	2"	.93952	2"	.96428
3"	.88920	3"	.91491	3"	.94005	3"	.96466
4"	.88972	4"	.91542	4"	.94054	4"	.96515
5"	.89027	5"	.91592	5"	.94108	5"	.96567
6"	.89082	6"	.91649	6"	.94160	6"	.96618
7"	.89134	7"	.91700	7"	.94209	7"	.96667
8"	.89190	8"	.91754	8"	.94263	8"	.96719
9"	.89244	9"	.91808	9"	.94315	9"	.96770
10"	.89296	10"	.91859	10"	.94365	10"	.96819
11"	.89352	11"	.91913	11"	.94418	11"	.96871
83'	.89406	87'	.91966	91'	.94470	95'	.96921
1"	.89458	1"	.92017	1"	.94520	1"	.96970
2"	.89514	2"	.92071	2"	.94561	2"	.97022
3"	.89568	3"	.92122	3"	.94625	3"	.97073
4"	.89620	4"	.92175	4"	.94674	4"	.97122
5"	.89675	5"	.92229	5"	.94727	5"	.97174
6"	.89730	6"	.92282	6"	.94780	6"	.97225
7"	.89781	7"	.92333	7"	.94829	7"	.97276
8"	.89837	8"	.92387	8"	.94882	8"	.97322
9"	.89891	9"	.92440	9"	.94934	9"	.97376
10"	.89942	10"	.92490	10"	.94983	10"	.97424
11"	.89998	11"	.92544	11"	.95036	11"	.97474
84'	.90052	88'	.92597	92'	.95088	96'	.97526

# 324 REAL ESTATE PRINCIPLES AND PRACTICES

Depth		Depth		Depth		Depth					
Ft.	In.	Ratio	Ft.	In.	Ratio	Ft.	In.	Ratio			
	1"	.97575		1"	.99967		1"	1.02310		1"	1.04610
	2"	.97627		2"	1.00016		2"	1.02358		2"	1.04658
	3"	.97677		3"	1.00065		3"	1.02407		3"	1.04705
	4"	.97726		4"	1.00114		4"	1.02455		4"	1.04753
	5"	.97777		5"	1.00163		5"	1.02503		5"	1.04801
	6"	.97828		6"	1.00212		6"	1.02551		6"	1.04848
	7"	.97876		7"	1.00261		7"	1.02600		7"	1.04895
	8"	.97928		8"	1.00310		8"	1.02648		8"	1.04943
	9"	.97978		9"	1.00359		9"	1.02696		9"	1.04990
	10"	.98026		10"	1.00408		10"	1.02744		10"	1.05037
	11"	.98076		11"	1.00458		11"	1.02793		11"	1.05085
97'		.98129	101'		1.00507	105'		1.02841	109'		1.05132
	1"	.98177		1"	1.00556		1"	1.02889		1"	1.05179
	2"	.98228		2"	1.00605		2"	1.02937		2"	1.05226
	3"	.98279		3"	1.00654		3"	1.02985		3"	1.05274
	4"	.98327		4"	1.00703		4"	1.03033		4"	1.05321
	5"	.98378		5"	1.00752		5"	1.03082		5"	1.05368
	6"	.98428		6"	1.00801		6"	1.03130		6"	1.05415
	7"	.98477		7"	1.00850		7"	1.03178		7"	1.05462
	8"	.98528		8"	1.00899		8"	1.03226		8"	1.05510
	9"	.98578		9"	1.00948		9"	1.03274		9"	1.05557
	10"	.98626		10"	1.00997		10"	1.03322		10"	1.05604
	11"	.98677		11"	1.01046		11"	1.03370		11"	1.05651
98'		.98728	102'		1.01095	106'		1.03418	110'		1.05698
	1"	.98776		1"	1.01144		1"	1.03465		1"	1.05745
	2"	.98827		2"	1.01193		2"	1.03513		2"	1.05792
	3"	.98877		3"	1.01241		3"	1.03561		3"	1.05839
	4"	.98925		4"	1.01290		4"	1.03609		4"	1.05886
	5"	.98976		5"	1.01339		5"	1.03657		5"	1.05933
	6"	.99026		6"	1.01388		6"	1.03705		6"	1.05980
	7"	.99074		7"	1.01436		7"	1.03752		7"	1.06027
	8"	.99125		8"	1.01485		8"	1.03800		8"	1.06074
	9"	.99175		9"	1.01534		9"	1.03848		9"	1.06121
	10"	.99223		10"	1.01582		10"	1.03896		10"	1.06168
	11"	.99274		11"	1.01631		11"	1.03943		11"	1.06215
99'		.99324	103'		1.01680	107'		1.03991	111'		1.06262
	1"	.99371		1"	1.01728		1"	1.04039		1"	1.06309
	2"	.99422		2"	1.01777		2"	1.04087		2"	1.06356
	3"	.99472		3"	1.01825		3"	1.04135		3"	1.06403
	4"	.99520		4"	1.01874		4"	1.04183		4"	1.06449
	5"	.99572		5"	1.01923		5"	1.04230		5"	1.06496
	6"	.99621		6"	1.01971		6"	1.04277		6"	1.06543
	7"	.99668		7"	1.02019		7"	1.04325		7"	1.06590
	8"	.99719		8"	1.02067		8"	1.04373		8"	1.06637
	9"	.99769		9"	1.02116		9"	1.04420		9"	1.06683
	10"	.99818		10"	1.02164		10"	1.04468		10"	1.06730
	11"	.99868		11"	1.02213		11"	1.04516		11"	1.06777
100'		.99917	104'		1.02261	108'		1.04563	112'		1.06823



<i>Depth</i>		<i>Depth</i>		<i>Depth</i>		<i>Depth</i>	
<i>Feet</i>	<i>Ratio</i>	<i>Feet</i>	<i>Ratio</i>	<i>Feet</i>	<i>Ratio</i>	<i>Feet</i>	<i>Ratio</i>
1"	1.06870	1"	1.09091	1"	1.11275	1"	1.13424
2"	1.06917	2"	1.09137	2"	1.11320	2"	1.13468
3"	1.06963	3"	1.09183	3"	1.11365	3"	1.13513
4"	1.07010	4"	1.09228	4"	1.11411	4"	1.13557
5"	1.07057	5"	1.09274	5"	1.11456	5"	1.13601
6"	1.07103	6"	1.09320	6"	1.11500	6"	1.13646
7"	1.07150	7"	1.09366	7"	1.11545	7"	1.13691
8"	1.07196	8"	1.09412	8"	1.11590	8"	1.13735
9"	1.07243	9"	1.09457	9"	1.11635	9"	1.13779
10"	1.07289	10"	1.09503	10"	1.11680	10"	1.13823
11"	1.07336	11"	1.09549	11"	1.11725	11"	1.13868
113'	1.07382	117'	1.09595	121'	1.11770	125'	1.13912
1"	1.07429	1"	1.09640	1"	1.11815	126'	1.14442
2"	1.07475	2"	1.09686	2"	1.11860	127'	1.14970
3"	1.07522	3"	1.09732	3"	1.11905	128'	1.15496
4"	1.07569	4"	1.09778	4"	1.11950	129'	1.16020
5"	1.07615	5"	1.09823	5"	1.11995	130'	1.16542
6"	1.07661	6"	1.09868	6"	1.12040	131'	1.17062
7"	1.07707	7"	1.09914	7"	1.12084	132'	1.17580
8"	1.07754	8"	1.09960	8"	1.12129	133'	1.18096
9"	1.07800	9"	1.10005	9"	1.12174	134'	1.18611
10"	1.07846	10"	1.10051	10"	1.12219	135'	1.19123
11"	1.07893	11"	1.10097	11"	1.12264	136'	1.19633
114'	1.07939	118'	1.10142	122'	1.12309	137'	1.20142
1"	1.07985	1"	1.10187	1"	1.12354	138'	1.20649
2"	1.08031	2"	1.10233	2"	1.12399	139'	1.21155
3"	1.08078	3"	1.10278	3"	1.12443	140'	1.21658
4"	1.08124	4"	1.10324	4"	1.12488	141'	1.22160
5"	1.08170	5"	1.10370	5"	1.12533	142'	1.22760
6"	1.08216	6"	1.10415	6"	1.12577	143'	1.23158
7"	1.08262	7"	1.10460	7"	1.12622	144'	1.23654
8"	1.08308	8"	1.10506	8"	1.12667	145'	1.24149
9"	1.08355	9"	1.10551	9"	1.12711	146'	1.24643
10"	1.08401	10"	1.10596	10"	1.12756	147'	1.25134
11"	1.08447	11"	1.10642	11"	1.12801	148'	1.25624
115'	1.08493	119'	1.10687	123'	1.12845	149'	1.26113
1"	1.08539	1"	1.10732	1"	1.12890	150'	1.26599
2"	1.08585	2"	1.10778	2"	1.12935	151'	1.27084
3"	1.08631	3"	1.10823	3"	1.12979	152'	1.27568
4"	1.08677	4"	1.10868	4"	1.13023	153'	1.28050
5"	1.08724	5"	1.10913	5"	1.13068	154'	1.28530
6"	1.08770	6"	1.10958	6"	1.13113	155'	1.29009
7"	1.08816	7"	1.11004	7"	1.13157	156'	1.29487
8"	1.08862	8"	1.11049	8"	1.13202	157'	1.29963
9"	1.08907	9"	1.11094	9"	1.13246	158'	1.30437
10"	1.08953	10"	1.11139	10"	1.13290	159'	1.30910
11"	1.08999	11"	1.11184	11"	1.13335	160'	1.31382
116'	1.09045	120'	1.11230	124'	1.13379	161'	1.31853

<i>Depth</i>		<i>Depth</i>		<i>Depth</i>		<i>Depth</i>	
<i>Ft. In.</i>	<i>Ratio</i>	<i>Ft. In.</i>	<i>Ratio</i>	<i>Ft. In.</i>	<i>Ratio</i>	<i>Ft. In.</i>	<i>Ratio</i>
162'	1.32322	172'	1.36932	182'	1.41414	192'	1.45776
163'	1.32788	173'	1.37386	183'	1.41855	193'	1.46206
164'	1.33254	174'	1.37838	184'	1.42295	194'	1.46635
165'	1.33718	175'	1.38289	185'	1.42734	195'	1.47062
166'	1.34180	176'	1.38739	186'	1.43172	196'	1.47489
167'	1.34643	177'	1.39188	187'	1.43609	197'	1.47915
168'	1.35104	178'	1.39636	188'	1.44045	198'	1.48340
169'	1.35563	179'	1.40082	189'	1.44479	199'	1.48763
170'	1.36020	180'	1.40527	190'	1.44912	200'	1.49186
171'	1.36477	181'	1.40971	191'	1.45344		

Example: To find the value of a lot 110 feet 7 inches deep, a standard lot being worth \$75,000, multiply \$75,000 by  $1.06 = \$79,500$ .

For depths of more than 200 feet or where greater accuracy is desired than three places of decimals, use the formula, in which Y= the proportion of value of lot in question to value of standard lot, and X= the proportion of depth of lot in question to depth of standard lot.

## No. 85

## AGREEMENT BETWEEN OWNER AND ARCHITECT

## ON THE FEE PLUS COST SYSTEM

Copyright 1917 by the American Institute of Architects,  
The Octagon, Washington, D. C.

THIS AGREEMENT made the ..... day of ..... in the year Nineteen Hundred and ..... by and between ..... hereinafter called the Owner, and ..... hereinafter called the Architect, WITNESSETH, that whereas the Owner intends to erect (Add here brief description of scope and manner of execution of work.) .....

NOW, THEREFORE, the Owner and the Architect, for the considerations hereinafter named, agree as follows:

The Architect agrees to perform for the above-named work, professional services as stated in Article 1 of the "Conditions of Agreement between Owner and Architect" hereinafter set forth.

The Owner agrees to pay the Architect the sum of ..... dollars (\$.....) as his fee, of which ..... dollars (\$....) is to be paid in ..... equal installments monthly, beginning ....., the balance to be paid on issuance of final certificate; and to reimburse the Architect monthly all costs incurred by him in the performance of his duties hereunder as more fully set forth in the said "Conditions."

The parties hereto further agree to the following:

## CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT.

*Article 1. The Architect's Services.*—The Architect's professional services consist of the necessary conferences, the preparation of preliminary studies, working drawings, specifications, large-scale and full-size detail drawings; the drafting of forms of proposals and contracts; the issuance of certificates of payment; the keeping of accounts, the general administration of the business and supervision of the work.

*2. The Architect's Fee.*—The fee payable by the Owner to the Architect for his personal professional services shall be as named elsewhere in this Agreement.

In case of the abandonment or suspension of the work or of any part or parts thereof, the Architect is to be paid in proportion to the services rendered on account of it up to the time of its abandonment or suspension, such proportion being 20% upon completion of preliminary sketches and 60% upon completion of working drawings and specifications.

If the scope of the work or the manner of its execution is materially changed subsequent to the signing of the Agreement the fee shall be adjusted to fit the new conditions.

If additional personal service of the Architect is made necessary by the delinquency or insolvency of either the Owner or the Contractor, or as a result of damage by fire, he shall be equitably paid by the Owner for such extra service.

*3. The Architect's Costs.*—The Architect shall maintain an efficient and accurate cost-keeping system as to all costs incurred by him, in connection with the subject of this agreement, and his accounts, at all reasonable times, shall be open to the inspection of the Owner or his authorized representatives.

The costs referred to in this Article comprise the following items:

(a) The sums paid for drafting, including verification of shop drawings, for specification writing and for supervision of the work.

(b) The sums paid to structural, mechanical, electrical, sanitary or other engineers.

(c) The sums paid for incidental expenses such as costs of transportation or living incurred by the Architect or his assistants while traveling in discharge of duties connected with the work, costs of reproducing drawings, printing or mimeographing the specifications, models, telegrams, long distance telephone calls, legal advice, expressage, etc.

(d) A proportion of the general expenses of the Architect's office, commonly called "Overhead," representing items that cannot be apportioned in detail to this work, such as rent, light, heat, stenographer's services, postage, drafting materials, telephone, accounting, business administration, etc.

It is agreed that the charge for such general expenses shall be .... per cent of item (a) of this article.

*4. Payments.*—On or about the first day of each month the Architect shall present to the Owner a detailed statement of the payment due on account of the fee and the costs referred to in Article 3 and the Owner shall pay the Architect the amount thereof.

*5. The Owner's Decisions.*—The Owner shall give thorough consideration to all sketches, drawings, specifications, proposals, contracts and other documents laid before him by the Architect and, whenever prompt action is necessary, he shall inform the Architect of his decisions in such reasonable time as not to delay the work of the Architect nor to prevent him from giving drawings or instructions to Contractors in due season.

*6. Survey, Borings and Tests.*—The Owner shall furnish the Architect with a complete and accurate survey of the building site, giving the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, boun-

daries and contours of the building site, and full information as to sewer, water, gas and electrical service. The Owner is to pay for test borings or pits and for chemical, mechanical or other tests when required.

*7. Supervision of the Work.*—The Architect will endeavor to guard the Owner against defects and deficiencies in the work of contractors, but he does not guarantee the performance of their contracts. The supervision of an Architect is to be distinguished from the continuous personal superintendence to be obtained by the employment of a clerk-of-the-works.

When authorized by the Owner, a clerk-of-the-works, acceptable to both Owner and Architect, shall be engaged by the Architect at a salary satisfactory to the Owner and paid by the Owner.

*8. Preliminary Estimates.*—When requested to do so, the Architect will make or procure preliminary estimates on the cost of the work and he will endeavor to keep the actual cost of the work as low as may be consistent with the purpose of the building and with proper workmanship and material, but no such estimate can be regarded as other than an approximation.

*9. Ownership of Documents.*—Drawings and specifications as instruments of service are the property of the Architect whether the work for which they are made be executed or not.

*10. Successors and Assignments.*—The Owner and the Architect, each binds himself, his successors, executors, administrators, and assigns to the other party to this agreement, and to the successors, executors, administrators, and assigns of such other party in respect of all the covenants of this Agreement.

The Architect shall have the right to join with him in the performance of this agreement, any architect or architects with whom he may in good faith enter into partnership relations. In case of the death or disability of one or more partners, the rights and duties of the Architect, if a firm, shall devolve upon the remaining partner or partners or upon such firm as may be established by him or them, and he, they or it, shall be recognized as the "successor" of the Architect, and so on until the service covered by the agreement has been performed. The Owner shall have the same rights, but in his case no limitation as to the vocation of those admitted to partnership is imposed.

Except as above, neither the Owner nor the Architect shall assign, sublet or transfer his interest in this agreement without the written consent of the other.

*11. Arbitration.*—All questions in dispute under this agreement shall be submitted to arbitration at the choice of either party.

No one shall be nominated or act as an arbitrator who is in any way financially interested in this contract or in the business affairs of either party.

The general procedure shall conform to the laws of the State in which the work is to be erected. Unless otherwise provided by such laws, the parties may agree upon one arbitrator; otherwise there shall be three, one named in writing by each party and the third chosen by these two arbitrators, or if they fail to select a third within ten days, then he shall be chosen by the presiding officer of the Bar Association nearest to the location of the work. Should the party demanding arbitration fail to name an arbitrator within ten days of his demand, his right to arbitration shall lapse. Should the other party fail to choose an arbitrator within said ten days, then such presiding officer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing, the arbitrators are empowered by both parties to proceed *ex parte*.

The arbitrators shall act with promptness. If there be one arbitrator his decision shall be binding; if three, the decision of any two shall be binding. Such decision shall be a condition precedent to any right of legal action, and wherever permitted by law it may be filed in Court to carry it into effect.

The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the costs and charges of the arbitration upon either or both parties.

The award of the arbitrators must be in writing and, if in writing, it shall not be open to objection on account of the form of the proceedings or the award, unless otherwise provided by the laws of the State in which the work is to be erected.

The Owner and the Architect hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF they have executed this agreement, the day and year first above written.

.....  
 .....

No. 86

## AGREEMENT BETWEEN OWNER AND CONTRACTOR

Adopted and Recommended for General Use by the American Institute of  
Architects and the National Association of Builders.

Copyrighted 1905 by the American Institute of Architects, Washington, D. C.

Revised, 1907

THIS AGREEMENT, made the ..... day of ..... in the year one thousand, nine hundred and ..... by and between ..... party of the first part (hereinafter designated the Contractor..), and ..... party of the second part (hereinafter designated the Owner..),

WITNESSETH that the Contractor.., in consideration of the agreements herein made by the Owner.., agree.. with the said Owner.. as follows:

ARTICLE I. The Contractor.. shall and will provide all the materials and perform all the work for the .....  
 ..... as shown on the drawings and described in the specifications prepared by ..... Architect, which drawings and specifications are identified by the signatures of the parties hereto, and become hereby a part of this contract.

ART. II. It is understood and agreed by and between the parties hereto that the work included in this contract is to be done under the direction of the said Architect, and that his decision as to the true construction and meaning of the drawings and specifications shall be final. It is also understood and agreed by and between the parties hereto that such additional drawings and explanations as may be necessary to detail and illustrate the work to be done are to be furnished by said Architect, and they agree to conform to and abide by the same so far as they may be consistent with the purpose and intent of the original drawings and specifications referred to in Art. 1.

It is further understood and agreed by the parties hereto that any and all drawings and specifications prepared for the purposes of this contract by the

said Architect are and remain his property, and that all charges for the use of the same, and for the services of said Architect, are to be paid by the said Owner...

ART. III. No alterations shall be made in the work except upon written order of the Architect; the amount to be paid by the Owner.. or allowed by the Contractor.. by virtue of such alterations to be stated in said order. Should the Owner.. and Contractor.. not agree as to amount to be paid or allowed, the work shall go on under the order required above, and in case of failure to agree, the determination of said amount shall be referred to arbitration, as provided for in Art. XII of this contract.

ART. IV. The Contractor shall provide sufficient, safe and proper facilities at all times for the inspection of the work by the Architect or his authorized representatives; shall, within twenty-four hours after receiving written notice from the Architect to that effect, proceed to remove from the grounds or buildings all materials condemned by him, whether worked or unworked, and to take down all portions of the work which the Architect shall by like written notice condemn as unsound or improper, or as in any way failing to conform to the drawings and specifications, and shall make good all work damaged or destroyed thereby.

ART. V. Should the Contractor.. at any time refuse or neglect to supply a sufficiency of properly skilled workmen, or of materials of the proper quality or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the Architect, the Owner.. shall be at liberty, after three days written notice to the Contractor.., to provide any such labor or materials, and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor.. under this contract; and if the Architect shall certify that such refusal, neglect or failure is sufficient ground for such action, the Owner.. shall also be at liberty to terminate the employment of the Contractor.. for the said work and to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all materials, tools and appliances thereon, and to employ any other person or persons to finish the work, and to provide the materials therefor; and in case of such discontinuance of the employment of the Contractor.. shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the Owner.. in finishing the work, such excess shall be paid by the Owner.. to the Contractor..; but if such expense shall exceed such unpaid balance, the Contractor.. shall pay the difference to the Owner... The expense incurred by the Owner.. as herein provided, either for furnishing materials or for finishing the work, and any damage incurred through such default, shall be audited and certified by the Architect, whose certificate thereof shall be conclusive upon the parties.

ART. VI. The Contractor.. shall complete the several portions, and the whole of the work comprehended in this Agreement by and at the time or times hereinafter stated, to wit:

.....

.....

ART. VII. Should the Contractor.. be delayed in the prosecution or completion of the work by the act, neglect or default of the Owner.., of the Architect, or of any other contractor.. employed by the Owner.. upon the work, or by any damage caused by fire or other casualty for which the Contractor..... not responsible, or by combined action of workmen in no wise caused by or resulting from default or collusion on the part of the Contractor.., then the

time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all the causes aforesaid, which extended period shall be determined and fixed by the Architect; but no such allowance shall be made unless a claim therefor is presented in writing to the Architect within forty-eight hours of the occurrence of such delay.

ART. VIII. The Owner.. agree.. to provide all labor and materials essential to the conduct of this work not included in this contract in such manner as not to delay its progress, and in the event of failure so to do, thereby causing loss to the Contractor.., agree that ..... will reimburse the Contractor.. for such loss; and the Contractor.. agree.. that if ..... shall delay the progress of the work so as to cause loss for which the Owner.. shall become liable, then ..... shall reimburse the Owner.. for such loss. Should the Owner.. and Contractor.. fail to agree as to the amount of loss comprehended in this Article, the determination of the amount shall be referred to arbitration as provided in Art. XII of this contract.

ART. IX. It is hereby mutually agreed between the parties hereto that the sum to be paid by the Owner.. to the Contractor.. for said work and materials shall be .....  
 .....  
 subject to additions and deductions as hereinbefore provided, and that such sum shall be paid by the Owner.. to the Contractor.., in current funds, and only upon certificates of the Architect, as follows:  
 .....  
 .....

The final payment shall be made within ..... days after the completion of the work included in this contract, and all payments shall be due when certificates for the same are issued.

If at any time there shall be evidence of any lien or claim for which, if established, the Owner.. of the said premises might become liable, and which is chargeable to the Contractor.., the Owner.. shall have the right to retain out of any payment then due or thereafter to become due an amount sufficient to completely indemnify ..... against such lien or claim. Should there prove to be any such claim after all payments are made, the Contractor.. shall refund to the Owner.. all moneys that the latter may be compelled to pay in discharging any lien on said premises made obligatory in consequence of the Contractor.. default.

ART. X. It is further mutually agreed between the parties hereto that no certificate given or payment made under this contract, except the final certificate or final payment, shall be conclusive evidence of the performance of this contract, either wholly or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials.

ART. XI. The Owner.. shall during the progress of the work maintain insurance on the same against loss or damage by fire, ..... the policies to cover all work incorporated in the building, and all materials for the same in or about the premises, and to be made payable to the parties hereto, as their interest may appear.

ART. XII. In case the Owner.. and Contractor.. fail to agree in relation to matters of payment, allowance of loss referred to in Arts. III or VIII of this contract, or should either of them dissent from the decision of the Architect referred to in Art. VII of this contract, which dissent shall have been filed in writing with the Architect within ten days of the announcement of such decision, then the matter shall be referred to a Board of Arbitration to consist of one person selected by the Owner.., and one person selected by the Con-

tractor., these two to select a third. The decision of any two of this Board shall be final and binding on both parties hereto. Each party hereto shall pay one-half of the expense of such reference.

The said parties for themselves, their heirs, successors, executors, administrators and assigns, do hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first above written.

In presence of

No. 87

TORRENS LAW—REGISTRAR'S CERTIFICATE OF TITLE—NEW YORK

No. First registered

CERTIFICATE OF TITLE

(First Certificate) or (Transfer from No....)

State of New York  
County.....ss.:

of (residence, and if a minor give his age; if under other disability, state the nature of the disability); married to (name of husband or wife, or if not married, say not married); is the owner of an estate in fee simple (or as the case may be) in the following land (here describe the premises) subject to the estates, easements, incumbrances and charges hereunder noted. (In case of trust, condition or limitation, say "in trust" or "upon condition" or "with limitation," as the case may be.)

WITNESS my hand and seal this (date)

(Seal) Registrar.

MEMORIALS

of estates, easements and charges on the land described in the above certificate of title.

Document number	Kind	Running in favor of	Terms	Date of Registration	Signature of Registrar



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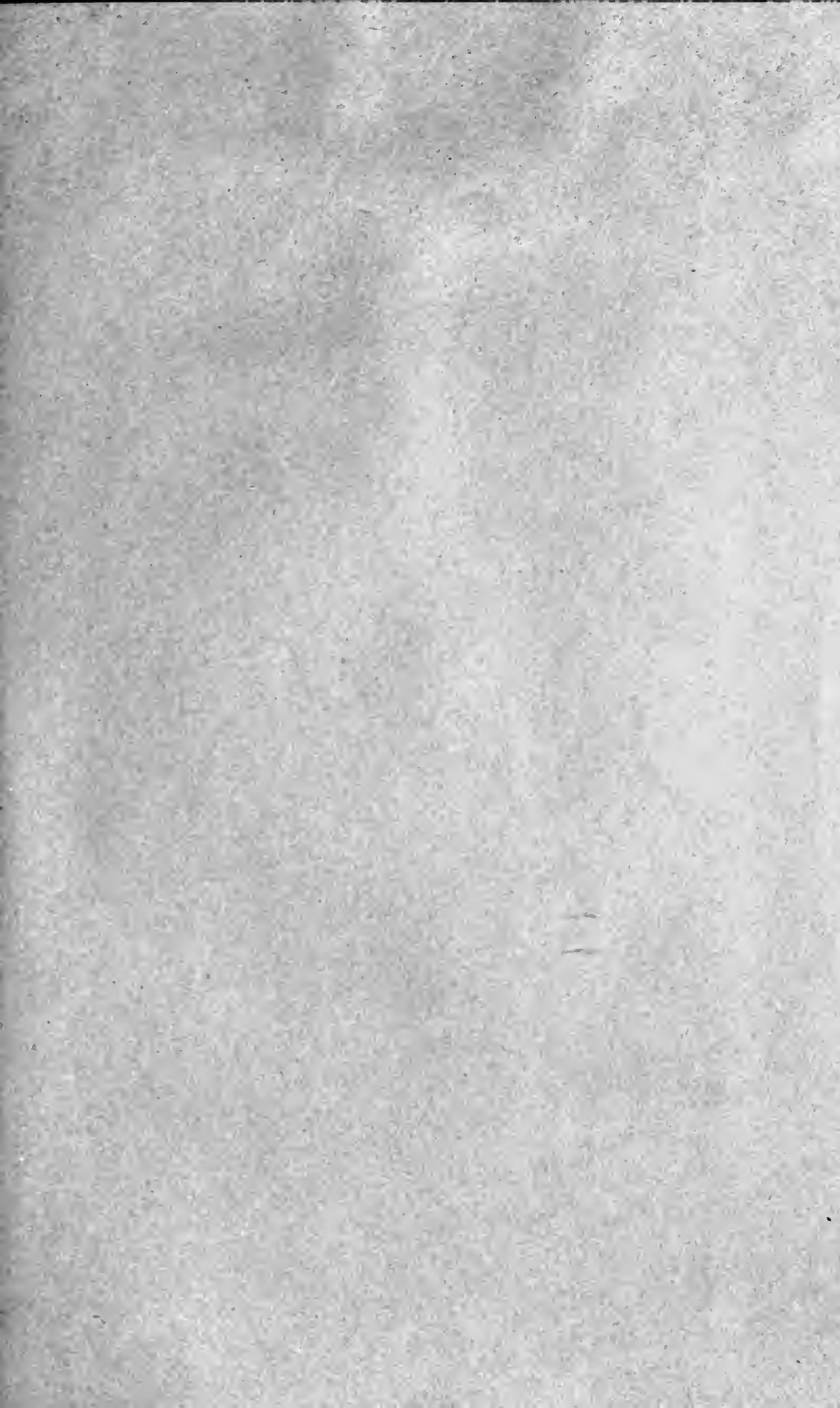
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